

# **Policy Warning Report**

*edited by*

**Romanian Academic Society (SAR)**

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**POLICY WARNING REPORT - ROMANIA**  
**ROMANIAN ACADEMIC SOCIETY (SAR)**

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## **Abstract:**

Split between its desire to join the EU and the necessities of regional security that Europe has not been able to address so far, Romania is facing hard choices in the years to come. However, the **Politics** section points out that it will be difficult to deal with these external challenges if the domestic policy-making and administrative capacity continue to remain low (arguably, the lowest among candidate countries). SAR used the implementation of the Freedom of Information Act as a test case of general administrative capacity, and found out that Romanian public institutions function at about half the efficiency of their Bulgarian counterparts.

Without good and efficient domestic institutions, even EU financial assistance can hardly make a difference. The issue of “absorption capacity” of these funds has been debated with much passion, but no conclusive arguments have been presented to the public so far. For the first time, we break the silence on this matter and show that the problem is significant, point out where the real institutional bottleneck is in administering EU assistance programs, and suggest remedies.

**Public opinion** section shows trust in government on a slight decrease after a long stagnation. The current government has managed to cling to its electorate in the past year, but made no new inroads. Here you can find a synthesis of the public opinion in the last twelve months read through the CURS-SAR polls.

**Economy.** Sidex is being restructured, but can other big SOEs follow in its steps? This section analyzes the results achieved at Sidex by the new private owners and concludes that on balance the picture looks good. But the peculiarities of steel industry make this success hard to replicate elsewhere.

**Rule of law.** With a tradition of state abuse and a weakened media, is Romania able to cope in the new security-conscious global environment? SAR issues a warning that freedom of speech and other civil rights may be under threat. Restrictive legislation, indebted TV channels and economic pressures on local newspapers reduce the scope for independent opinions.

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- MAY 2003 -

## SELECTED INDICATORS

	Q1 2002	Q2 2002	Q3 2002	Q4 2002	Year 2002	Jan. 2003	Feb. 2003	Mar 2003	Trend
GDP growth (quarterly, annualized), %	3.1	5.7	4.5		4.9				↗
Devaluation of the Leu/USD, monthly average, %	4.1	1.8	- 1.1	1.3	6.02	- 1.1	-0.02	0.2	↘
Inflation, monthly average, %	3.9	5.1	2	6	17.8	1.3	0.8	1.1	↘
Interest rate (BUBOR, one week) %	37.5	31.3	26.7	21.2		18	16.5		↘
Industrial output, % change	4.4	4.2	6.9	8.3	6.0	3.4			↗
Trade deficit, FOB/CIF (million USD)	759	1,003	948	1,279	3,988	218	247		-
Unemployment rate, %	13	9.6	8.2	8.1	8.1	8.3	8.5		-
Average net monthly salary, USD	110.4	117.8	118.3	122.3	117.2	131.9	121		-
State pensioners / employees	1.01	1.011	1.013	1.02		1.06			↗
Trust in government, % (The current Government can improve things)	45	38	32			38			↗
Pessimism, % (Country heading in the wrong direction)	51	57	62			48.6			↘
Subjective welfare, % (Better off than last year)	11	12	11			15			↗

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## **1. GOVERNMENT**

### **1.1 LOW STATE CAPACITY HINDERS ROMANIA'S EUROPEAN ACCESSION**

The Copenhagen European summit of last December brought few novelties in the EU's approach to Romania and Bulgaria. Based on the roadmap for the two countries, itself heavily drawing on the Commission's strategy paper and the conclusions of the Brussels European Council, the final Copenhagen document restated the Union's support towards the target set by the two countries for 2007. The roadmap offered again the list of checkpoints for the two countries, longer for Romania than for Bulgaria. As forecast in previous issues of EWR, Croatia has announced its application for membership and observers consider that its chances to catch up with Romania are high. Bulgaria is expected to have to wait for the two others, although its development cannot catch up in such a short time. Romania is doing better in terms of structural development (lower rate of poverty), but its administrative performance and adoption of the *acquis* trail further behind Bulgaria. The two countries together form a contrasting pair: in Romania the society is doing relatively well (compared to Bulgaria), but the state is below required levels; in Bulgaria the state is performing, making structural constraints on a severely underdeveloped society less visible. Its political problems put aside, Croatia is doing far better both in terms of state and in terms of society. Its entrance into the race, if accepted by the Commission, may increase the likelihood of a second wave in 2007 or 2008. But can Romania be ready by then?

Negotiation chapters have been provisionally closed on the basis of the indicative accession date – 2007. 22 chapters have been provisionally closed with Bulgaria and 15 with Romania. Progress towards the completion of the accession negotiations will reflect progress in the adoption, implementation and enforcement of the

necessary measures in each country. The roadmap reiterates the worries of the strategy and country report, by stating that 'The overall capacity of the public administration to implement the *acquis* remains limited and represents a major constraint on Romania's accession preparations. While certain parts of the administration are able to function effectively there are many important sectors where the weakness of the administration is a serious cause for concern. These concerns extend beyond adoption of the *acquis* and also apply to the management of EC financial assistance.' While credit is given to the government for starting to tackle the issue, the roadmap acknowledges that intentions, more than an actual policy is all the government has for now to redress its administrative capacity.

**Three main political obstacles** hinder Romania's European accession. The first is low administrative capacity. The second is the absence of development /integration policies and strategies of implementation from both the government and the frail opposition parties, in other words the underdevelopment of the policymaking environment. The third is low legislative capacity, which explains to a great extent while negotiations with Romania are slow. Even if the current government, based on one party, improved somehow on the performance of the previous government, based on a undisciplined coalition, the level remains below Bulgaria's. The indicator of this structural problem remains the number of emergency ordinances. Despite receiving heavy criticisms, the ordinances proliferate, because by-passing the Parliament at least in the short run is the only effective way the government can pass legislation.

European integration is a difficult task for Romania to achieve by 2007. Despite this fact, there are few signs that political parties understand they must put behind the violent partisanship raging in Romanian politics. The ungovernable Bucharest, where European money from credits are daily lost due to squabbles between councillors and the mayor (see the next article) is an eloquent example for how Romanian politics works, or rather how it does not work. The government spent about three months discussing early elections, but neither early nor regular elections are likely to change this pattern in which competition for state capture is everything, while policy and public interest are lost on the way. Unsurprisingly, less than 10% of Romanians trust any political party (those who do turn out to be the supporters of radical parties), 75% do not feel close to the ideology of any party and almost 80% believe their representatives in the Parliament do not do anything for the public interest<sup>2</sup>. And, indeed, the Parliament is not part in most relevant policy

**Still low  
administrative  
and legislative  
capacity**

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<sup>2</sup> CURS data, October 2002 poll commissioned by SAR.



decisions, being busy to rubber-stamp retrospectively the government ordinances. Governments have repeatedly claimed, with good reason, that abuse of ordinances is due to the low effectiveness of the Parliament (unlike ordinary laws, ordinances become effective immediately, even if the Parliament can modify them later in the process). Despite pledges to make the Parliament more effective, the two chambers and most MPs are often in the position to make simple figuration. Moreover, due to their large numbers, they do not interact often enough with the representatives of the international community, to which only a small number of leaders get access. This further prevents them from finding opportunities to upgrade their capacity. Together, these three problems generate a **weak state syndrome** – an inability to manifest political will from one reason or another<sup>3</sup>.

The indicator for **low legislative capacity** is the number of acquis acts passed through Parliament, compared to the same numbers in Central European countries. The indicator for **low policy capacity** is the small number of policy materials produced to promote integration, which is not going to happen only as a by-pass effect of adopting legislation. Neither the government, nor the opposition parties have created substantial policy materials in this respect, despite the large number of laws and amendments produced in total disregard of the limited implementation capacity. What are the indicators of the Romanian administrative capacity, the one of three, which seems to carry all the blame and actually how low is it?

Every PHARE program officer has his or her own answer, depending on how the specific program worked. Assessing implementation of a policy, so more than just of a program (the equivalent of measuring the impact of the program) is seldom carried out. In some instances, programs fail from stage one due to the inability to spend funds. In other cases specific programs are avoided and money lost because the administration thinks it has more to lose than gain assuming the tasks. Therefore, getting to the final stage – assessing the outcome effects of the program on society – is quite exceptional. However, the final stage of the accession process requires more than formal adoption of acquis, assuming this can be eventually achieved. It requires implementation of EU legislation. Put bluntly, this means that besides adopting regulations that the cans must be trashed in the can bin and the paper in the paper bin, the government must be able to enforce it, and the Romanians actually start showing some discipline in disposing their garbage. How far away is Romania still from that ideal?

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<sup>3</sup> The definition belongs to Wladimir Gligorov.

## The case of FOIA

To measure administrative performance, SAR used a case study. It took one piece of legislation passed in 2001, whose implementation starting with 2002 has made the object of a government specific implementation act outlining instructions (*norme*), which was widely disseminated. Unlike other pieces of legislation, this law (Freedom of Information Act) has also received public attention and free publicity from the media, as well as many trainings for government officials from the part of the donor community. Conditions are therefore met to make it as a relevant case study: one year after, was the law actually implemented and the targets the government has set for itself met?

**Implementing  
FOIA is a test of  
capacity of the  
public sector**

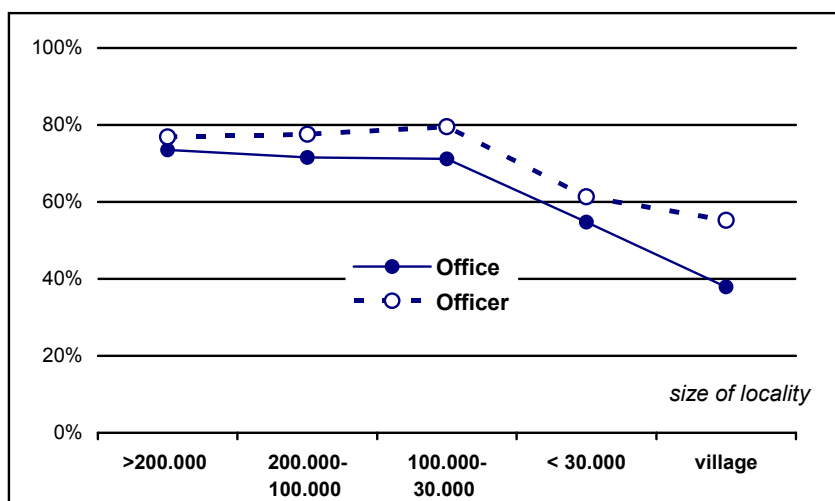
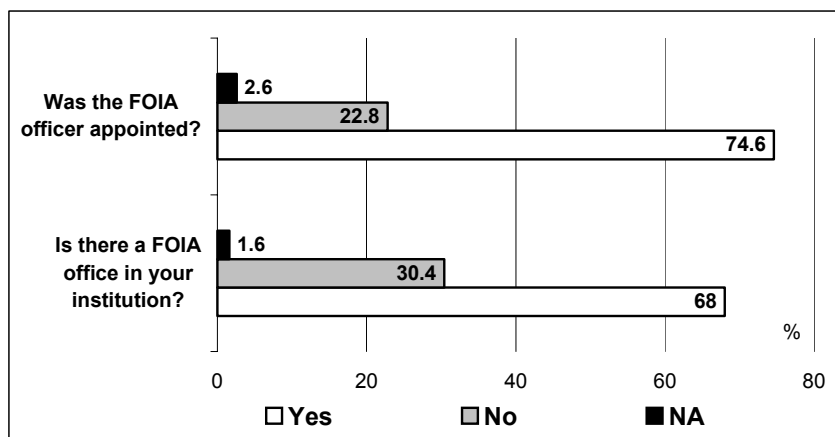
SAR's methodology consisted in a survey of 500 public institutions from 96 localities, of which 40 county capitals. A questionnaire was applied by SAR's operators checking how the main requirements of the law were fulfilled in the legal timeframe. Operators were also asked to check, whenever possible, the statements of their respondents from various public agencies. All county capitals and a significant number of villages and medium-size towns were included, as well as relevant public agencies (Fig. 1).

The first round of questions checked on the formal implementation of the law. More specifically, FOIA asked that access to public information by public authorities should be granted upon request or ex-officio, through the specially designated office or civil servant (article 3) and public institutions must establish specialized offices with the competence to inform the public and answer to the public's requests for information (art 4).

**Fig. 1. Public institutions surveyed**

	No.
Local governments	85
Parliament	
Ministries	15
Prefectures	40
Higher courts	33
Lower courts	42
Public prosecutor offices	46
School districts	41
Police precincts	55
County councils	49
Local labor offices	59
Other institutions	32
<b>Total</b>	<b>500</b>

**Fig. 2. Formal compliance by law provision and size of locality**



Results point to the ordinary formal compliance: three quarters of the sample designated a person in charge of fulfilling the law's requirements, and over two thirds even created a special office to deal with FOIA (Fig. 2). Implementation is, unsurprisingly, considerably lower in rural than urban areas, The level drops already at the level of cities below 100 000 to drop seriously at the commune and village level.

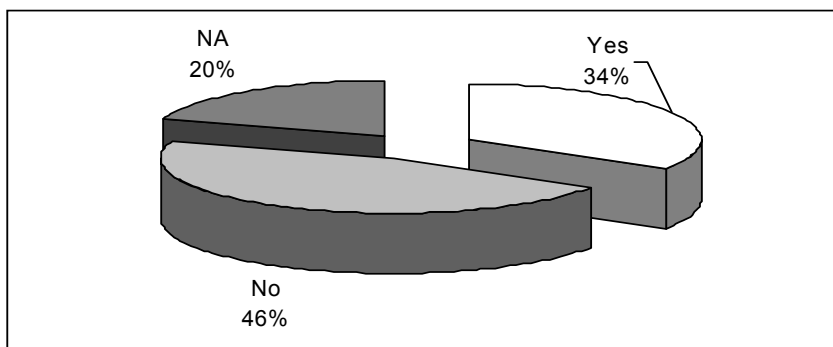
Going more in depth, article 5 requires in its turn that „each institution must produce and made available ex officio the following list of documents of public interest:

- The basic laws and regulations governing the institution
- The organizational chart, contact details of the main departments, office hours and appointment hours
- The name and contact details of the FOIA officers

- d) The budget and the main financial reports
- e) The programs and strategies of the institution
- g) The list of the documents of public interest
- h) The list of documents produced and / or administered by the institution
- i) The procedure that should be followed by the public for administrative complaints, appeal and judicial action against the public institution

SAR asked respondents on the existence of such a list. Results are outlined in Fig. 3 below, and show that the list was declared ready in a much smaller number of institutions, namely a third of the total. The existence of the list is crucial to orient citizens, NGOs and the media on the *kind* of information, which is produced by the agency. It is also important in the justice, if the case ends up in a tribunal, as the law allows. In one of the first FOIA legal cases, a state agency responsible for monitoring drinking water quality denied its respective quality in front of the judge and in the absence of any documents the case was lost by the plaintiff, a former employee denying the agency knowingly allowed the water to stay above the admissible pollution level. Furthermore, the figure represents only the number of self-reports stating that the list was compiled.

**Fig. 3. Self-reports on producing the list of public documents**



However, when operators asked to see the list themselves, only 16% of agencies could produce one. Our operators did not check if the list was accurate and complete. The essential fact is that 16% only were able to meet the minimal first requirement of freedom of information act: making the inventory of public information which can be disclosed to the public. What did the large numbers of FOIA officers do all along remains a mystery. They were not too busy with handling requests, as only 22% agencies have received official requests for information based on FOIA in the first year of implementation. How can these even be handled if the list is not available to the public? Eight agencies

**Only 16% of the Romanian public institutions against 48% in Bulgaria proved able to implement FOIA in the first year**

have been sued on the basis of FOIA so far, and 23 have received administrative complaints that requests for information were unsatisfactorily handled.

One year after FOIA was enacted the evidence does therefore show that it was implemented formally and superficially in 2/3 of the agencies surveyed, but the first substantial step was undertaken in only 16% of the public administration, compared to 48% in Bulgaria in the first year after their FOIA was enacted<sup>4</sup>. The case is illustrative for the fate of the *acquis*, which even after going passing the obstacle of Parliament is awaited by a similar outcome. The government department in charge with Freedom of Information Act, the Department of Information, has invested a lot of its public credit on this bill, as well as a substantial budget to buy advertising space and commission an unconvincing awareness campaign. Even when efforts are made, the results match the above model: less than fifth of a total are near the level of implementation required.

The roadmap of the European Commission makes some substantial recommendations to the Romanian government (page 25): to devise mechanisms to increase accountability and political independence of civil servants, to introduce human resources management, increase training, develop further legislation of civil servants, and so forth. All these seem more like targets than recommendations to those acquainted with the situation on ground. It is not by mere chance that Romania has the highest corruption score from all applicant countries with Transparency International, and the worse governance score with Freedom House-*Nations in Transit*. Nothing will prevent further legislation of being as disregarded as the current one is, and training for civil servants and politicians as superfluous as it has been in the past decade, if promotion in the state and local bureaucracy continues to have no connection with merit whatsoever, and performance, rather than loyalty, is not rewarded. Although Romania is a laggard in the process of EU integration, one should try hard to find one instance of public manager fired for not achieving the targets. Modern HR management presupposes a modern bureaucracy, not one ruled by particularism and patrimonialism. A policy to go beyond the weak state syndrome and affect substantially the implementation capacity of the government is almost impossible as long as the will itself to implement such a policy has yet to be mobilized.

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<sup>4</sup> Access to Information Program, 2002. The current Situation of the Access to Public Information in Bulgaria. AIP: Sofia.

## GUIDELINES FOR CIVIL SERVICE REFORM

- Revise both general labor legislation and specific civil servants law to allow for a competitive civil service, with promotion and salarization based on targets achieved (incentives) and permanent work contracts granted only after a number of targets are achieved (penalties). The Labor Code just adopted sets a poor framework for a flexible labor legislation, based on competition and achievement, not survival.
- Set performance targets, strictly correlated with the budget and wages, in each public agency, central government included.
- Create a watchdog of the government to enforce performance and ethics in the same time, whose evaluation in granting tenure or dismissing civil servants should be of crucial importance.
- Make periodical public evaluations of agencies and executives who perform and those who do not: continuing with the uniform (or erratic) treatment discourages performance.
- Make computer literacy and good knowledge of English mandatory for all the new positions in the civil sector.
- Advertise in the media the openings in the civil service and positions available in European assistance programs. The fact that such positions are seldom advertised feeds the public's distrust in the administration and gives the impression that European funds are only feeding rent-seekers.
- Dismiss at least once in a while top executives who perform poorly. Dismissals only on political reasons (more often than not because a person with political support wants to replace a civil servant with less or no political support) are counterproductive for administrative performance.
- Place clients who cannot be refused in positions where performance matters less, and do professional recruiting for jobs that really matter in the integration process. Protect from clients the few good people you manage to get: at the end of the day, they are the ones ensuring everybody's pay.
- When you can identify the few who deliver, promote them and empower them to manage larger sectors. At this level the expertise is very scarce, and turnout in civil service high, because people have many other opportunities in the private sector.

## 1.2 BOTTLENECKS OF EU FUNDS

Romania's low administrative capacity shows most dramatically in the key area of absorbing donor funds in general, and EU funds in particular. On a regular basis, officials from the European Commission publicly declare that the Romanian bureaucracy is unable to absorb the large sums of money which are made available each year. More funds were pledged by the EU for Romania and Bulgaria to help them catch up after Copenhagen, but in order for these funds to achieve their task current bottlenecks must be investigated.

Rather than accepting the criticism from Brussels in the spirit in which it is given – i.e. constructive criticism aimed to increase Romania's "absorption capacity" – government officials all too often go into defense mode and claim that we are in fact perfectly able to spend all the funds that Brussels makes available. In an interview with the EU Observer, Eneko Landaburu, head of the Enlargement Directorate at the European Commission said that Romania does not really have the administrative capacity to attract EU funds: "The problem lies with the weak administration, which will absolutely have to reform in order to join the EU in 2007". Also mentioned in the same interview was the problem of the EIB loan to Bucharest City Hall, which is also seen as an "absorption" problem. In response, the Ministry for European Integration made it clear that spending EU funds was not a problem for Romania and that an extra 2000 new bureaucrats were being employed this year in order to help resolve the issue.

What neither party addressed in this exchange was the real problem regarding EU funds – the institutional "bottleneck" within the Ministry of Finance, which not only delays the spending of EU funds, but also makes the process extremely tortuous and complicated, and the atmosphere poisoned, while the likelihood of "transferring know-how" (one of the aims of EU assistance) is lost within these bureaucratic struggles.

The following paragraphs seek to identify the bottleneck within the system, describe the overall context in which these funds are spent, and make some practical suggestions which would help to improve the situation.

### The framework and context of EU funds

Although Romanians have become accustomed to the fact that the EU and other international donors make large cash donations to Romania, little effort is made to promote the ideas and philosophies behind these funds and some people struggle to understand why so much money is given to their country. Fortunately, the European Commission has come a long way in terms of communicating its policies and guidelines<sup>5</sup>, most of which can be seen on their mega-site: <http://europa.eu.int>. According to the Vade Mecum on grant management (1998) "A grant is a direct payment of a non-commercial nature by the Commission to promote an EU policy aim." The overall objective of the PHARE programme is to "help the candidate countries prepare to join the European Union".

EU's policy in Romania is clear: the invitation to join the EU is open if the Romanian Government is able and willing to adopt – and properly implement – the 31 chapters of the *acquis communautaire*. This principle has been accepted by all Romanian political parties, the process is underway and the public is very much in favor of joining the EU (although whether this is due to ignorance of EU policies is open to debate).

In practice what the 31 chapters of the *acquis* represent is a detailed policy and road map to reform for each and every ministry<sup>6</sup>. This in turn means that each ministry can apply for EU "Structural Funds" in order to build its capacity to both manage the funds and adopt the new legislation. These funds generally end up in the hands of EU consultancy companies who provide a wide range of *Technical Assistance* and other services.

There are several problems at the ministerial level, problems that the European Commission's Delegation to Bucharest has been wrestling with for years:

- A tendency towards resentment among certain ministerial officials, who can dismiss and undermine the efforts of EU consultants. This is often based on jealousy because the EU

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<sup>5</sup> Despite the EU's progress in promoting its policies and procedures, the EU could do a lot more in terms of informing the Romanian public about what the various EU funds are actually spent on. The lack of information on this subject, allied to news of large sums of money becoming available, can lead to assumptions about corrupt practices.

<sup>6</sup> The World Bank programme for Romania is constructed along similar lines to the EU funds, i.e. budgets are allocated to individual line ministries based on their reform efforts, capacity and coherent requests.

**Romanian top  
civil servants  
have no stake in  
the success of an  
EU funded  
program**



consultant will be often getting paid hundreds times more than the Romanian officials. If the ministerial official is incompetent, he will seek to blame the consultancy for the lack of progress.

- A lack of capacity within individual ministries to understand and effectively deal with the complex EU procedures. Each ministry is required to set up a PMU (Project Management Unit) and if these appointments are made on political – rather than professional – criteria, little progress will be made.
- An expectation among certain PMU members that association with an EU project will bring personal material reward. When the officials realize that the consultants usually have little in the way of unallocated funds and many are unfamiliar with Romanian practices, relations can worsen.

These factors can undermine the assumption that an experienced western expert will be able to transfer know-how to open minded and supportive Romanian officials. While this may suit the consultant who is usually so caught up in the approval process with the Ministry of Finance (see below) that he/she has little time for the transfer of know-how, it represents a major lost opportunity for the ministries who should be learning from each and every specialist who visits.

**Programs  
become  
unmanageable  
because  
responsibility is  
not delegated**

The other EU policy that needs to be understood in this context is that of ownership. In order to build capacity and a sense of responsibility among candidate countries the European Commission introduced the DIS (Decentralized Implementation System). The DIS was a complex rule-book for individual ministries and governments to properly manage the EU funds (it has subsequently been updated and renamed) and was introduced in parallel with accession talks. At the same time, the EU introduced strict new spending rules, which obliged all procurement of goods and services to be tendered. On the theoretical side, both these developments were positive.

All this placed a huge burden on the Romanian bureaucracy, not used to setting up management units, run by genuine experts willing to take personal responsibility for complex decisions. Romania's institutional culture is more attuned to the command style of the Communist period, where initiative was crushed and all decisions were made by the minister. This was the first big "capacity crunch" that Romania faced with regard to the absorption of EU funds, and one that has not yet been satisfactorily resolved. If every paper, no matter how trivial, needs to be signed and countersigned up in the hierarchy, just because

responsibility cannot be delegated to lower levels, this leads to significant delays in the process.

If we jump to the present day, many of the above problems are being tackled, and it is clear that certain officials have made superhuman efforts to understand EU procedures and generally gear up the system to EU standards. Most ministries have set up PMUs and are managing EU funds from PHARE, ISPA and SAPARD. This government has made some important steps in improving Romania's absorption capacity. The new Ministry of European Integration deserves particular credit for setting up training and information schemes in order to build the capacity of the line ministries.

### **Identifying the “bottleneck”**

In order to understand the bottleneck within the system it is essential to understand the way in which contracts are awarded and where lie the ministerial responsibilities. The process by which a ministry – or a municipal government – can access EU funds, to finance particular projects, is as follows:

- The European Commission will sign a *Financial Memorandum* with a line ministry with regard to a particular project that relates to a policy (e.g. For environmental policy, a project to improve the water supply system in Galati would qualify);
- The Ministry responsible for water supplies will produce a *Terms of Reference (TOR)*. This should be done by the PMU but if they are not able (as is often the case) it can be done by a consultant or an EC Delegation staff member;
- The TOR becomes the basis for a public tender for *Supplies, Services or Works*, which is announced on the Commission's internet site;
- A number of (usually international) service companies – or consortia – are shortlisted. They submit detailed proposals and budgets and an evaluation committee at the Ministry of Finance's CFCU (Central Finance and Contract Unit) chooses the most competitive offer. EC representatives can attend these evaluation sessions and can cancel them if they suspect corrupt practices;
- A contract is signed between the company (the contractor) who wins the tender and the CFCU (the contracting authority). From the moment the contract is signed, the contractor must submit continual progress reports and detailed spending analyses to the CFCU if it wants to be paid for its services.

What becomes clear in the above description is the critical role of the Ministry of Finance's CFCU, which is in effect the legal entity responsible for almost all EU projects. In addition to its responsibilities for the international EU contracts, the CFCU is also responsible for each and every sub-contract the contractors sign with local suppliers – as well as each and every grant contract for the grant funds (e.g. the 19 million Euro given in grants to Child Protection Institutions). This rule was set up in order to prevent corruption but it just creates an unmanageable mass of work for the CFCU, as well as excruciating delays and stress at all levels of the system.

**The real  
bottleneck –  
CFCU, in the  
Ministry of  
Finance**

It is within the CFCU where the bottleneck in the system lies, and because of its obscure identity within the Ministry of Finance it escapes the scrutiny of the media, which is generally reserved for the Ministry of European Integration (where most people wrongly believe the "absorption capacity" problem lies). The problems faced by the CFCU are complex and numerous, but the main internal problems can be presented as follows:

- With hundreds of contracts operating simultaneously, the CFCU is under much pressure regarding its financial and legal responsibilities. It lacks resources in general and human resources in particular, and is unable to effectively monitor all contracts.
- Due to the institutional culture of decision making at the highest level, the CFCU's problems are compounded by the fact that the director must personally approve almost all contracts and invoices. There appears to be very little delegation of authority and an atmosphere of mistrust regarding the contractors (and the EC Delegation has not been determined enough in discouraging this attitude). This factor is the "bottleneck within the bottleneck", and getting the director's approval for mundane issues can involve lobbying from the delegation and even Brussels.
- Romanian officials are poorly paid and there are no concessions for those within the CFCU. Many of them see the seemingly high fees of international and local consultants. Such low pay, allied to such high levels of responsibility, inevitably leads to demotivation.
- Despite its strategic responsibilities, and the complex nature of the work involved, the CFCU is run like any other Romanian public institution – with a consequent lack of modern management systems (clear lines of responsibility, incentives, delegation of authority, training, bonuses) which could help to

more effectively manage the massive workflow. The directors are so swamped in mundane work that they are unable to consider strategic or policy decisions.

Taking into consideration the above factors, it is a wonder that anything gets done at all at the CFCU and it is a testament to the hard work and integrity of the officials involved that they are able to get so many contracts through this bottleneck, and have remained apparently clean to date. The following factors can be described as external factors influencing the CFCU and these are equally important in understanding the problem.

- With delays in getting approvals for most EU projects, the EC Delegation inevitably gets involved in pressurising the CFCU officials to agree to individual requests from the contracts they are responsible for. The effect of this informal lobbying is that the EU is effectively taking the initiative away from the government, thus undermining the EU's overall aim of creating a sense of ownership within the Romanian government. Although this is justified in terms of expediency, it does present a moral dilemma that needs to be addressed.
- As a further negation of the principle of Romanian government ownership, the PMUs within the individual ministries become marginalized within this bureaucratic process, and the delays that occur are out of PMUs' control. Although the PMUs designed the projects, and are responsible for approving their contractors' progress reports (which is a requirement for payment) as well as local tenders, they have no contractual authority over the contractor and this can be a demotivating factor, which can result in a loss of interest in the project itself, and an increased likelihood of know-how not being passed on.

As mentioned above, the fact that the CFCU is so well hidden within the Ministry of Finance (which rarely comments on EU issues) is one of the reasons why it has so far not come under press or diplomatic scrutiny. If the CFCU could be modernized in terms of its management capacity, and properly resourced, it could play a key part in not only managing EU funds better but ensuring that the transfer of know-how actually happens and is not just an idea to be sneered at by frustrated and burned out officials.

**The following recommendations** would go some way to resolving the problems faced by the CFCU, which in turn would increase not only their own capacity but also the capacity of Romania to effectively absorb all the EU funds available:

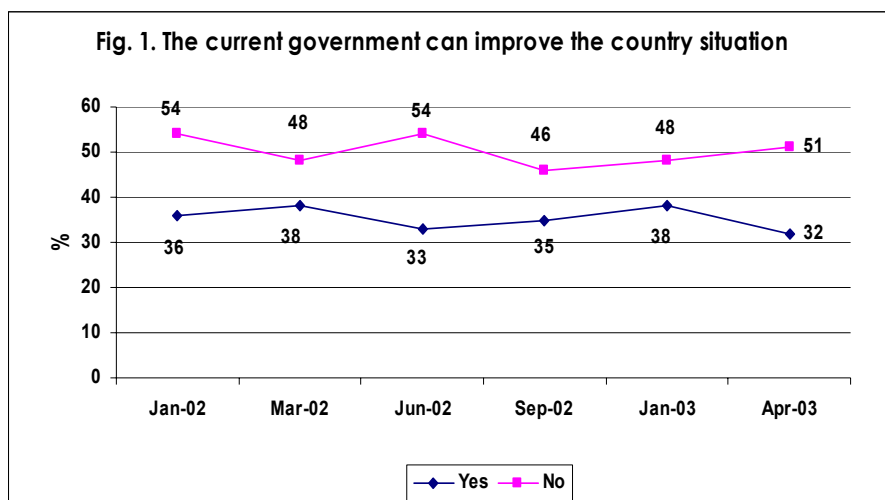
1. The Romanian government and the European Union should commission an experienced management consultancy consortium to fully assess the needs of the CFCU. The detailed recommendations of this study should form the basis for a full modernization package that could transform the institution.
2. Based on the recommendations, which would emerge from the above study, the management of the CFCU should be overhauled and the principle of delegation of authority – in particular – should be implemented.
3. The CFCU should be fully resourced in order to effectively carry out its current duties, to motivate and manage its staff, and to have spare capacity to deal with other EU related policy issues.
4. The diplomatic and political communities in Romania should recognize the CFCU for what it is: *a strategic point within the administration that is responsible for all EU funds, and at the same time a bottleneck that is preventing Romania from absorbing all the funds and know-how that is made available to it.*
5. Once the management and resource issues are decided, the CFCU should develop an effective Monitoring and Evaluation Unit, as well as a Public Relations capacity, thus ensuring that the press, the diplomats and the politicians are kept informed about the progress being made.

## 2.PUBLIC OPINION

### GOVERNMENT SUPPORT DECLINES AFTER LONG STAGNATION

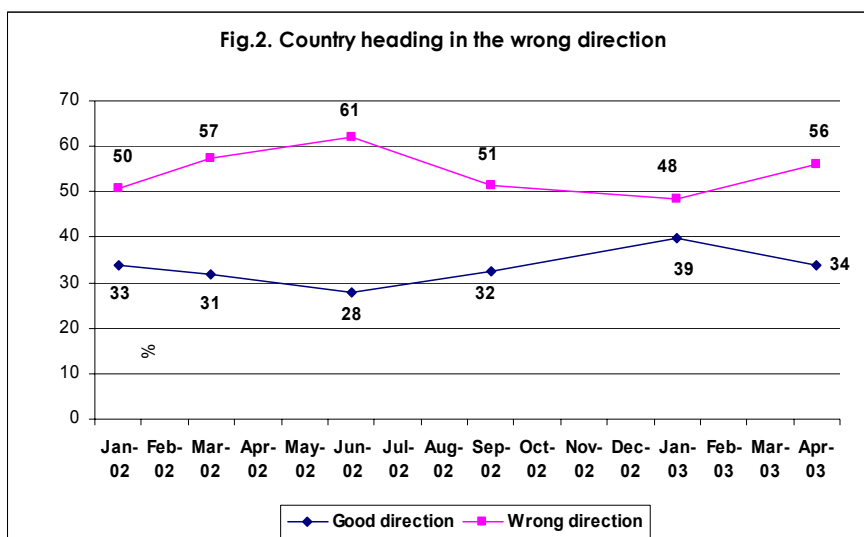
- Romanians love both US and Europe indiscriminately

There was no NATO effect. Unlike the spectacular changes of landscape in the public opinion of neighbor countries after their NATO entry, the Romanian public opinion was rather stagnant. The government party kept most of its public support after the drop experienced in the first part of 2002. No significant new support was gained, however, and the figures of trust in the main political institutions stayed largely the same. The government ended the year with a distrustful majority, but kept its hard core of supporters unaffected (38% compared to 36% a year ago). However, spring polls show discontent is again on the rise, the numbers of those considering the government is not able to handle the country reaching the absolute majority threshold (51%).<sup>7</sup>

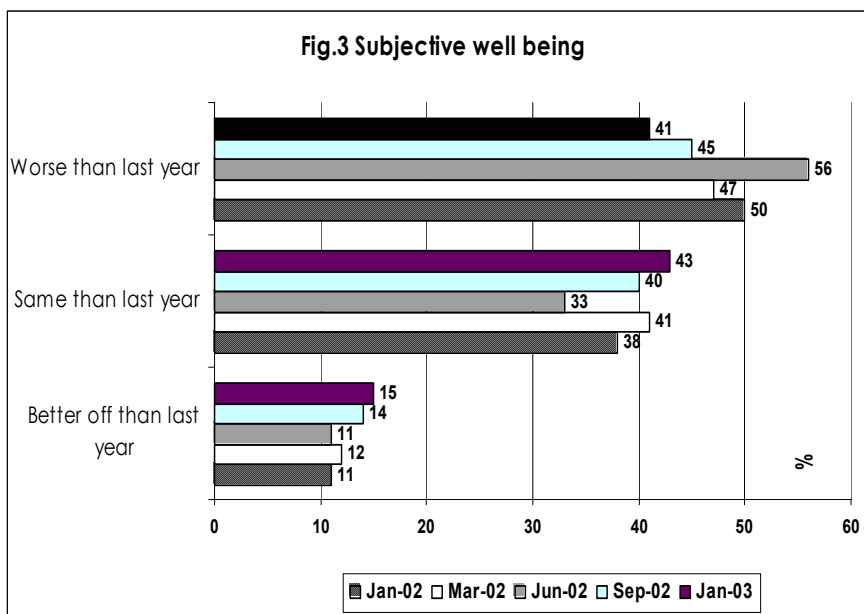


<sup>7</sup> April 2003 CURS poll.

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The majority of Romanians experienced no improvement in their lives. The average household income of those who report stagnation in their welfare is of 4.8 million ROL (130 euro) compared to only 2.87 million ROL (80 euro) for those who report being worse off.



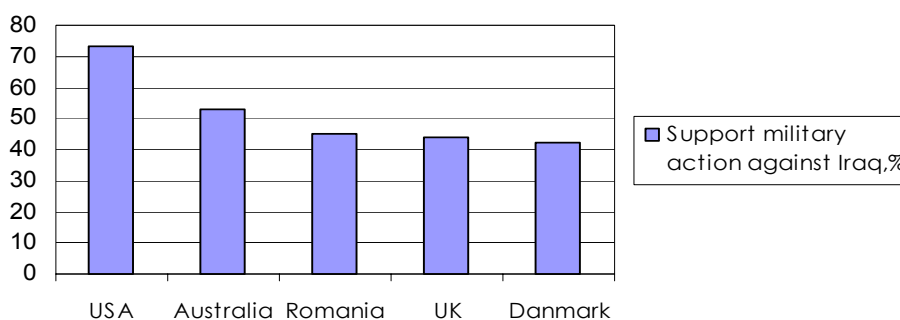
**Fig. 4. Public opinion by income group**

	Mean (euro)	(Standard deviation)
Government is not able to improve situation	128	(5,83)
Government is able to improve situation	124	(5,14)
Don't know	96	(3,12)
Wrong direction	109	(5,17)
Right direction	145	(5,59)
Don't know	102	(4,34)

Source: January 2003 CURS poll

The perception of the country headed right or wrong seems to be determined by one's household economic performance. The perception of government's capacity to handle things is less so – other factors, such as one's ideological stand, or party preference, have a stronger influence here. Therefore, while an important difference in income separates those approving of direction from those disapproving of it, those doubting or endorsing the government have similar incomes. The political preference of Romanians stayed largely the same throughout the past year. The global events had limited influence. Romanians approved of support for the US, while remaining committed for European integration. They were less anti-war than most European countries.

**Fig. 5. Top international military support against Iraq**

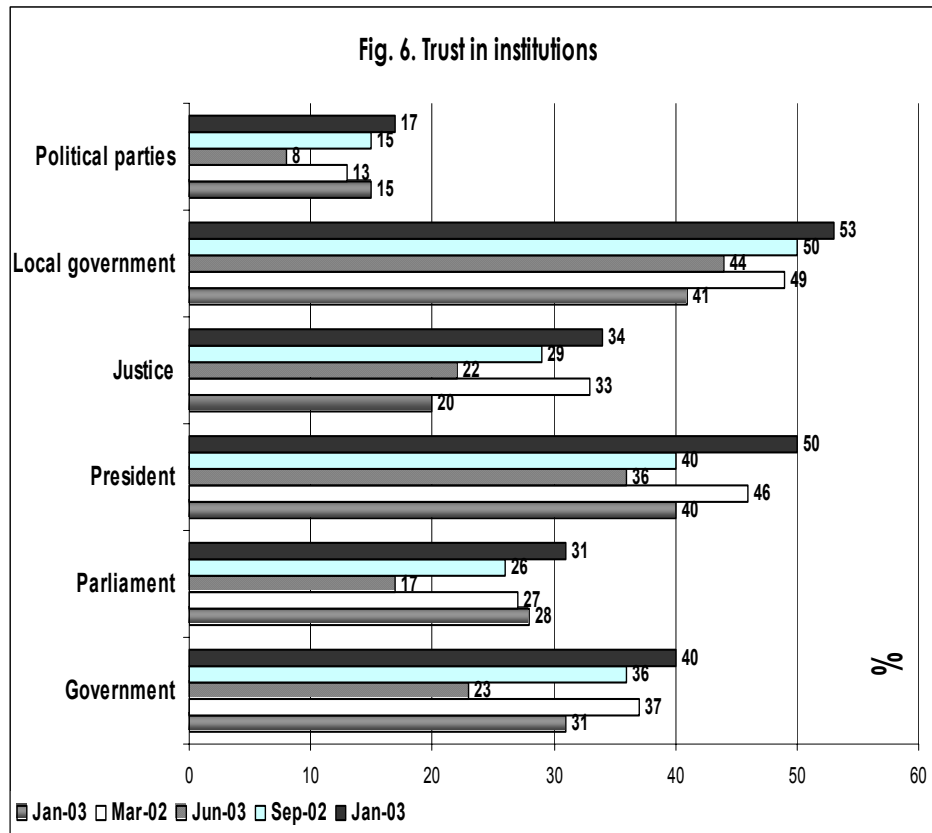


Source: Gallup International Iraq Poll, 2003

Trust in political institutions remains comparable with that in other Balkan countries: political parties and Parliament are the least trusted institutions. One peculiarity of Romania is the relative high level of trust that local governments have enjoyed starting with 1999. There is a clear correlation between the level of decentralization and



empowerment of local government, and their capacity to satisfy public demand, reflected in the figures of trust. The judiciary and the police are still facing majorities who are not appreciative of their performance.



2002 was clearly on the average a more peaceful year from the social point of view than 2001: fewer strikes, less tension among the new rich and the poor. Overall, the level of conflict perceived by the public stayed the same, with high figures for social conflict and conflict with Roma, and the usual ones for conflict with Hungarians. The distance between conflicts experienced in one's environment in the previous year and the overall appreciation of conflict grew in 2002: less experience does not modify the general perception of conflict in the short run. The latter is grounded in prejudice at least as solidly as in experience: in the case of conflict with Hungarians, where no conflict is reported, the high figure of 'subjective conflict' (42%) is clearly unfounded, echo of symbolic international conflicts (such as the Status Bill, see previous Annual EWR) and not of direct experience, which could not be more peaceful. Twice as many believe in social conflicts than those experiencing them locally, probably due to media exposure. While overall social and ethnic tension remains high, the

decrease in direct experience with local conflicts is a positive development.

**Fig. 7. Trends of subjective and experienced conflict 2002-2003**

	Subjective conflict 02	Subjective conflict 03	Experienced conflict 02	Experienced conflict 03
Employers and employees	72	68	43	37
Rich and poor	70	62	38	30
Romanians and Hungarians	43	42	4	3
Romanians and Roma	60	60	35	30

### **3.ECONOMY**

## **THE TURNAROUND OF SIDEX. CAN OTHERS FOLLOW?**

#### **Case study**

The privatisation of SIDEX - the largest steel maker in South Eastern Europe - in the second half of 2001 was arguably a milestone of structural transformation in the Romanian economy. SIDEX was regarded as one of the largest "black holes" of the economy, becoming an ever growing burden for the state budget. The lack of a resolute approach on SIDEX had been thought to illustrate the insufficient advance of the reform process in Romania; social constraints, underperforming management and industry-specific problems added to the problem. The new owner of SIDEX, LNM ISPAT, a global player in the steel industry, faced the difficult task of turning SIDEX performances around. The year 2002 witnessed history in the making; SIDEX financial results appear encouraging, while the feared social bomb has not blown off.

This paper analyzes the privatisation of SIDEX under many aspects: the deal itself, the determinant factors that laid behind it, its implications for the public budget, the evolution of SIDEX financial indicators, the experience of LNM ISPAT in restructuring similar companies in distress in other countries. But first and foremost, we consider the SIDEX

case in the context of other large state owned loss-making companies in Romania. Can the SIDEX example be replicated in other troubling industries? Or is it a looking-like success story, but only an isolated one?

### **What lessons should we learn?**

This paper holds that the outcome of specific privatisation deals varies with the type of industry and the profile of investor. Metallurgical products are, to a large extent, fungible, and competitive advantage in this industry can be considerably improved through managerial tactics; also, the SIDEX buyer has a global bargaining power, and a worldwide experience in restructuring troublemaking companies. These conditions have not been met on many occasions before; only resembling industries and investors could think of repeating the SIDEX experience in transition economies.

### **Type of industry and profile of investor**

Metallurgy was at the heart of earlier industrial revolutions; it is usually associated with a heavy-type of industry consisting of large production capacities, high consumption of energy, mass employment. Steel industry has been traditionally subject of various foreign trade barriers and foreign ownership limitations. However, steel products are commodities (products are standardized; one can choose to buy Romanian steel over American steel, if price is better). This particularity makes the steel industry global by nature; as globalization advances in all fields, the steel industry is being forced to admit its nature.

Cost-effectiveness must be considered at a global scale and the industry can not escape the wave of consolidation (mergers and acquisitions) already wide-spread in global industries producing global products. Mergers in recent years include Krupp and Thyssen, British Steel and Hoogovens, Nippon Steel and Kawasaki, Usinor and Arbed, not to mention the appetite the LNM Group has proved for ailing mills worldwide; yet, the scope for further consolidation remains as the top ten steelmakers collectively produce only about 25% of the world's crude steel production.

The LNM Group has been buying its way to the status of global investor over the last two decades. The LNM Group comprises LNM Holdings, a family business, and Ispat International, a company listed on the New York Stock Exchange, where LNM Holdings has an 80% stake. LNM Holdings includes: Ispat Nova Hut (Czech Republic), Ispat Sidex (Romania), Iscor Limited (South Africa), Ispat Karmet (Kazakhstan), Ispat Annaba (Algeria), Ispat Indo (Indonesia). Ispat International includes: Ispat Unimetal (France), Ispat Germany, Ispat Sidbec (Canada), Carribean Ispat (Trinidad Tobago), Ispat Inland (USA), Ispat Mexicana (Mexico). According to statistics from the International Iron and Steel Institute, the LNM Group was the fourth largest steel producing company in 2000; the group currently appears to have

climbed even higher, closer to the ultimate ambitions expressed by its founder, Lakshi Mittal.

The LNM Group's philosophy is simple: buy distressed steelmakers, with a view to geographically diversify these acquisitions, and apply basic modern management principles and techniques to run them profitably. The LNM Group employs a core team of experts, moving them around from one location to another, to implement cost-cutting measures, marketing changes and market reorientation. Nothing very fancy, but simply effective in an industry with a long track of ill management, inefficient trade connections, and powerful unions. Results were sharp in many cases. Ispat Karmet doubled production in the first five years after acquisition; Ispat Mexicana increased production and shipment seven-fold in the first seven years from acquisition; Ispat Sidbec and Ispat Inland managed to reduce the cost per ton by 42\$, respectively 82\$, since acquisition; Ispat's plant in Ruhrort reduced manpower costs by 25% in the first two years following acquisition.

As the New York Times put it<sup>11</sup>, the LNM Group has become global "... by cheaply acquiring huge money-losing state-owned mills from governments desperate to remove them from state banks". The seller's eagerness to sell is a major ingredient in the LNM Group's success. Governments in emerging economies, or in more conservative states, want to escape social pressures and fiscal burdening; at least in the Eastern countries, some international financial institutions give a willing hand as well: EBRD granted a 100 mil.USD loan for the LNM's investments in Sidex, and a 450 mil.USD loan for the LNM's investments in Karmet. The scandal that burst out in Britain, stressing a contribution from Mittal to Tony Blair's campaign, followed by a letter signed by Blair, and addressed to the Romanian Prime-Minister, in support of the privatization of SIDEX, fuelled allegations of external political endorsement, not to say pressures, in favor of the SIDEX deal. It is noteworthy that the privatization of SIDEX marked high on the agenda of IMF and World Bank programs in Romania; and the privatization of Nova Hut came only weeks before general elections were held in the Czech Republic.

Coincidentally or not, another factor that might have influenced LNM's decision to invest in Romania is the country, considered to belong to the group of developing economies, is therefore exempted from the 30% surcharge on steel imports imposed by US only a few months after the acquisition of SIDEX. The LNM Group avoids this barrier through its affiliates in Trinidad Tobago, Romania and Algeria, not to mention that it is the only global competitor to run plants in each of

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<sup>11</sup> Peter Green, "Betting Big on Reviving 'Black Holes' ", New York Times, July 7, 2002.

the three NAFTA countries. Mittal even says<sup>12</sup> that the imports control in US are a blessing in disguise, as they stimulated consolidation in the industry and boosted steel prices.

It should be said that, given the industry turmoil, SIDEX difficult financial position, and other competitors lack of interest for Eastern European mills, LNM was probably the only potential investor with a global exposure, willing to take over the operations of SIDEX. Usinor also expressed its interest, but only as management was regarded; and US Steel was the only American steelmaker to make an acquisition in Eastern Europe (Slovak Republic).

### The SIDEX deal

LNM's acquisition practice indicates a tendency for paying low amounts for the controlling stake (seeking for market power inducements wherever possible), and committing to invest more in restructuring and technological and environmental upgrading. SIDEX case, quite similar to that of Karmet, made no exception from this approach (see figure 1), as a result of LNM's strong bargaining power and, correspondingly, the low bargaining power of the Romanian state.

**Fig. 1. Comparison between various recent acquisitions by LNM**

Company acquired	Production capacity (million tonnes)/ no. of employees	Price for controlling stake, mil. USD	Total investment commitment, (incl. price paid outright), mil. USD
Sidex	4.5 27000	70	500
Nova Hut (Czech Rep.)	2.7 12000	20	905
Karmet (Kazakhstan)	6.3 72000	450	800
Mexicana	4.0 n.a.	25 plus 195 in government bonds	n.a.

Source: *ispat.com, worldsteel.org, international press*

The final deal, as set out in the Emergency Ordinance 119 of September 2001 - that came to be known as the "SIDEX ordinance" -, provides LNM with a wide range of incentives and facilities, summarized below:

<sup>12</sup> According to Financial Times, February 10, 2003.

- a debt-equity swap, as all receivables owned by state institutions, companies and authorities over SIDEX were converted into shares, at the nominal rate of 25000 lei/share. Subsequently, these resulting shares were sold to LNM at a rate of 3300 lei/share. Existing minority shareholders at that time, two SIFs included, were not permitted to contribute to the corresponding increase in social capital.
- five years exemption of customs duties and VAT for imports of equipment, raw materials and other products related to technological and environmental upgrading.
- five years VAT exemption on domestic market acquisitions related to technological and environmental upgrading.
- three years postponement of VAT payable for all other types of transactions.
- three years postponement of social contributions.
- five years profit tax exemption.
- a series of employees' rights are to be provided by the state in case of individual leaves.

The debt equity swap is an usual practice in the acquisition of heavily indebted companies. It erases overdue debts (at a discount premium) and it gives the buyer the opportunity to start the operations without historic debts. The LNM itself obtained a similar deal on the acquisition of Nova Hut, all debts to the state being cancelled and a large banking loan being rescheduled. However, this should not make us disregard the fact that such global hunters, LNM included, end up paying almost nothing for the assets of the companies they bought. The Mexican company bought by Ispat is a very modern one, built up by the Mexican government in the 80's for over 2.2 billion USD; Ispat bought it for an aggregate sum of just above 200 mil.USD.

SIDEX total assets mounted to over 1.1 billion USD at the time of acquisition; yet, it is unclear how much LNM actually paid for the business as such (if one leaves debts aside). One might be tempted to submit that the total sum paid by LNM for SIDEX only covers for the equity derived from the debt-equity swap. Following facts, that may lead to such a remark, are documented from multiple sources<sup>13</sup>:

- LNM paid 70 million USD to the Romanian state in exchange for around 90% of SIDEX, including a 70% stake hold by APAPS and an almost 20% stake resulted from the debt-equity swap.
- SIDEX financial statements recorded, at the end of December 2001, an increase in social capital, in the form of subscribed unpaid capital, of an amount slightly above 70 mil.USD. This subscribed capital was

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<sup>13</sup> SIDEX financial statements, LNM and Romanian Government press releases, APAPS reports, etc.

then paid, according to SIDEX financial statements as of first semester 2002.

- SIDEX liabilities diminished (see figure 2) by around 770 mil.USD between end of first semester and end of year 2001 (in this time interval, the "SIDEX ordinance" came into force). If we transform this difference in liabilities, at a rate of 9 cents per dollar - as it is suggested to us by the discount rate applied in the debt-equity swap -, it results a sum exceeding 69 mil.USD.

Another striking feature of the post-privatization episode, allegedly not comprised in the privatization deal, is that the Romanian Government, using RICOP resources as well, is supporting ISPAT SIDEX plan of job reductions (7400 employees left jobs voluntarily to take advantage of various compensatory schemes); monthly payments add to about 1,3 mil.USD and are expected to last until end of 2004.

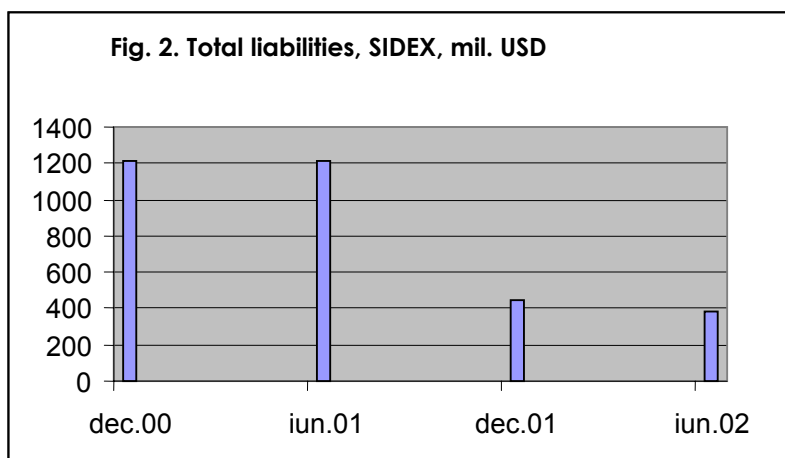
These controversial aspects asides, one must admit that the new owner of SIDEX is doing well to cut costs, improve efficiency, and even increase production. The key elements of the restructuring program implemented by LNM representatives at SIDEX are<sup>14</sup>:

- top local management was replaced by LNM Group senior executives;
- put an end to the barter system. The barter system used to be the main source for profit for small intermediate trading firms, at the expense of SIDEX; the mixed department for sales and acquisitions functioning with SIDEX before was closed down. The 100 mil.USD loan from EBRD helped increasing liquidity on short term.
- long term supply contracts were negotiated
- a system of authorized dealers was implemented. Only authorized dealers were allowed to distribute SIDEX products; and each authorized dealer must inform SIDEX on the final destination of each delivery.

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<sup>14</sup> as described by senior ISPAT SIDEX executives in the article mentioned from the New York Times

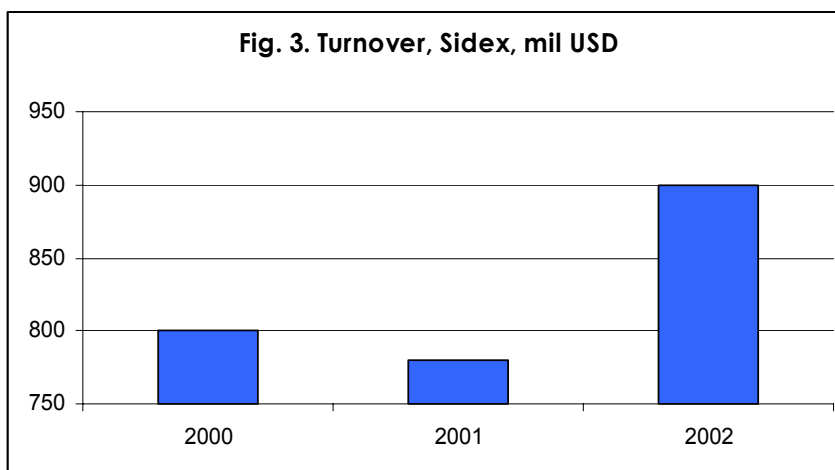




*Note: financial data converted at ROL/USD end period exchange rate*

*Source: computed from [www.rasd.ro](http://www.rasd.ro)*

These moves, among other restructuring efforts, led to improved financial indicators shortly after the acquisition (see figures 3 and 4). It is remarkable that turnover increased while the number of employees shrank by almost one quarter.

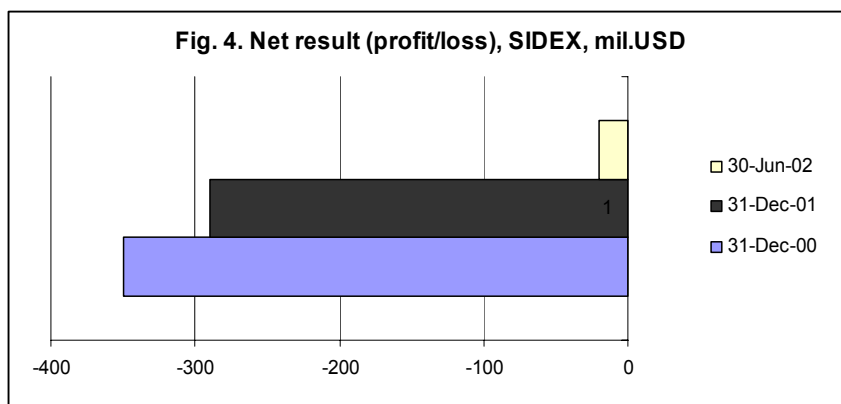


*Note: data for end year 2002 are annualized, based on first semester 2002.*

*Financial data converted at ROL/USD period average exchange rate*

*Source: computed from [www.rasd.ro](http://www.rasd.ro)*

These results should, nevertheless, be treated with precaution, as the financial records of such a global corporation like LNM is a complex web of financial links; one should not overlook the fact that affiliate's profitability is influenced by the thrive to achieve overall profitability and profits are sometimes recorded on purpose in those countries with a more favourable fiscal environment; in Romania, LNM benefits from numerous fiscal incentives, as described above.



*Note: financial data converted at ROL/USD period average exchange rate.  
Source: computed from [www.rasd.ro](http://www.rasd.ro)*

### Is SIDEX a model to be replicated?

- **First thing to emphasize in the SIDEX case is the specificity of the industry. Steel is a commodity**, hence steel products<sup>15</sup> made in Romania are, at least in theory, competing with steel products elsewhere.

From this perspective, the steel industry is comparable to the cement industry. Cement is one of the success stories of the privatization process in Romania; foreign capital has become predominant in this industry since 1998 (following the Lafarge-Romcim deal), and all the major five cement producers in Romania are now owned by foreign companies. Most privatization deals on this market were the result of direct sales, as it was the case for SIDEX as well. On the other hand, post-privatization competition in the cement industry proved limited, as a former oligopoly industry has changed to a sum of regional monopolies (allocation of market shares between competitors).

- **Another feature of SIDEX is that it already had a large domestic market.** SIDEX products, despite alleged low quality, had numerous domestic buyers, given their price and accessibility.

In this respect, SIDEX can be compared to the carmaker Dacia. Dacia had a large domestic market, despite alleged low quality of cars. Although carmaking is a global industry, the competing products are different in terms of quality and brand awareness; the product is not a commodity. Renault announced plans for a new car produced at the

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<sup>15</sup> There are two main groups of steel products: long products, respectively flat. LNM Group has a balanced portfolio of long and flat products. SIDEX produces more flat products, that compete with flat products elsewhere.

Dacia plant, to be competitive on foreign markets; however, four years after privatization, Dacia focus is still on the domestic market. Better management techniques were certainly introduced by Renault; yet, the results could not had been as spectacular as in the SIDEX case. Steel does not need to be re-invented to make it profitable and competitive in world markets; cars do sometimes, and Dacia is an example. Domestic market is a buffer for Renault's Dacia, until technological upgrading makes the car competitive abroad.

**Such a buffer does not exist, unfortunately, for other bad performing industries and firms in Romania.** The truckmaker Roman, for example, does not have a sufficient domestic market. The turnover/employee ratio, as of December 2001, was around 4300 USD, as compared to SIDEX pre-restructuring turnover/employee ratio (also on December 2001), which was 28300 USD. As figure 5 shows, Roman losses almost one dollar for each two dollars sold.

**Fig. 5. Roman selected financial indicators, mil. USD**

	31.12.1999	30.06.2001	31.12.2001	30.06.2002
Total liabilities	132.4	49.8	56.3	59.3
Turnover	52.3	16.7	37.9	22.6
Net result	-21.2	-8.5	-17.0	-9.9

*Note: financial data converted at ROL/USD end period exchange rate (for liabilities) and period average rate (for turnover and net result)*

*Source: computed from [www.rasd.ro](http://www.rasd.ro)*

Roman has constantly lost domestic market in favour of imported trucks. ARO and ROCAR have also constantly lost domestic market in favour of imported vehicles, making them unattractive for a potential buyer in quest for a competitive product. In their cases, technological upgrading is probably more expensive than the cost of greenfield investment, not to mention that, in a restructuring, sensitive job cuts need to be taken. Good examples in this regard are Landini-Laverda in the tractor-making and INA-FAG in roll-bearing industry. These two foreign investors decided not to buy Tractorul, respectively Rulmentul Brasov, but to set up new production facilities (in Buzau, and ironically Brasov).

- To replicate SIDEX story for another company, we need not only a similar commodity-type of industry and an existing market potential for company's products, but also, and maybe foremost, another LNM-type of investor. This is to say a global player in the respective industry, aiming at creating competitive advantage over global competitors by taking over emerging markets. In Romania, LNM obtained a bunch of fiscal facilities, debt swaps at discount rates, and a global advantage by avoiding US's surcharge on imported steel.

Can another foreign investor obtain similar market power inducements? They actually did, but failed in most cases to make a more competitive product and to increase overall welfare. OTE-Romtelecom and Noble Ventures – CS Resita deals are noteworthy. Both investors obtained numerous facilities and incentives, but the final result was disappointing; CS Resita is now back under state's administration, while OTE scored rising operational losses and was even fined by the Competition Council for monopolist behaviour. An explanation why these deals proved underperforming might had been the fact that these foreign investors had no global reach. They were, at the best, regional or niche players; their managerial experience in reviving distressed companies was limited, and their international network was not sufficiently expanded. **Therefore, the incentives and facilities obtained in Romania offered them a local competitive advantage, but not a global competitive advantage.**

This does not rule out the possibility that companies without a global exposure could engage in taking over troublemaking industries or firms. Such cases are however the exception rather than the rule, and case-by-case explanations can be found. Take the local investor MYO-O, who bought Semanatoarea few years ago (after the global investor New Holland abandoned acquisition plans) and is now close to finalize negotiations for Tractorul Brasov; MYO-O actually used to be a dealer for Semanatoarea and Tractorul products and their market knowledge lies probably behind their acquisitions.

## Warnings

- The SIDEX case should not be regarded as a benchmark for other large loss-making companies, unless a mix of conditions is met: a commodity-type of industry, or at least an industry with an appetite for consolidation, an existing demand for company's products, and a global reach investor with focus on emerging markets.

This is not to say that other stories (it is too early yet to call them success stories) could not occur; but not necessarily following the SIDEX example.

- **The improved financial indicators of SIDEX should be treated with caution**, given the complex web of financial relations within such a transnational corporation as the LNM Group. Moreover, a precedent has recently been set within the LNM Group regarding disinvestment. LNM closed its Irish mills in mid-2001, only few years after acquiring them, and few months before buying SIDEX. It is worth mentioning that, of all countries with LNM operations, Ireland was probably the one with the fastest pace of real convergence with the EU, in terms of wage

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differentials and environmental norms. The expected time of Romania's admission in the EU, 2007, coincides with the moment LNM's fiscal incentives at SIDEX come to an end.

## **4.PRESS FREEDOM**

### **VESTED INTERESTS HAVE NEARLY SUBORDINATED ROMANIAN MEDIA**

There is an obvious trade-off between security and personal freedom in human societies, and all modern democracies have worked out a compromise solution through trial and error in a process that took decades, if not centuries. By and large, the Western world has leaned towards personal freedom and created strong mechanisms to contain the government and defend the private life of its citizens, their freedom of speech or access to public information. Law and order agencies have to work under the close supervision of the judicial system, following lengthy and cumbersome procedures full of checkpoints, and every effort has been made to ensure that, whenever an error occurs, this happens on the liberty side.

However, this elaborate arrangement has always been subject to revision in the light of new developments. After September 11 the balance has tilted back towards security to a certain extent, following a genuine concern among the general public. The state investigation agencies were given more power to scrutinize individuals or „high risk groups”, which means they are more likely today than two years ago to peek into private correspondence, employment records, personal data or private bank accounts of ordinary citizens. Speedy procedures were set up to deal with suspicious cases, while the judicial supervision was somehow relaxed for the sake of expediency. This has happened not only in the USA, but also in continental Europe.

Our concern here is related to the capacity of the new democracies in Eastern Europe, primarily in countries like Romania, to cope with this worldwide change of priorities. We come from the opposite extreme, getting out a decade ago from a system where total social control was the norm and stability the supreme value. While Western societies have in-built natural mechanisms to supervise and restrain the newly empowered state and prevent abuses – strong civil societies, an institutional culture

**What can serve as counter-weight to the newly empowered state in the transition countries?**

of accountability in state organizations, an entrenched sense that repression, even when necessary, should be applied carefully and proportionate to the threat – no such thing exists in our parts. On the contrary, the local law and order agencies are by tradition unaccountable and abusive. Moreover, their new discretion of action is as likely as not to be used indiscriminately, targeting both potential wrongdoers and political adversaries of whoever is in power (examples below). Many democrats in the CEE countries hoped they could use the import of Western laws and institutions, backed by the influence of international organizations, precisely in order to change the informal practices inherited from the *ancient regime*. At present they are somehow disappointed to realize that the current trend is only likely to strengthen the hand of hardliners in state agencies – prosecutor offices, investigation police, intelligence services. In our parts many members of such institutions have been socialized professionally during the Communist times, and some used to work as officers and collaborators for the former Securitate apparatus. They have suddenly gained an unexpected legitimacy when accepted as counterparts by their Western colleagues in the new global fight against terrorism.

**Hardliners relish  
the security-  
oriented  
environment and  
their new  
legitimacy with the  
Western partners**

To a certain extent, this was unavoidable. However, there are two aspects we would like to stress here. First, democracy assistance and monitoring has to continue in Romania if the country is to ever establish the rule of law. Otherwise dangerous slippages can occur. Only in the last twelve months we have seen a flurry of restrictive legislation dealing with party registration<sup>16</sup>, NGO registration, the organization of peaceful public meetings and protests, tax fraud, the new Criminal Code, surveillance procedures, and so on. In some cases the laws are wrong -- for example those requiring government approval for registering an NGO, or banning some terms from being used by private associations in their names (such as "institute", "academy" or "national"). Other are less funny and can have sinister consequences, such as the provision of the draft Penal Code that punishes with 2 to 5 years in jail the dissemination outside Romania of "false and biased news that affect the interests or honor of the nation". Try to recall how many times in the last year you happened to be abroad and said something which may qualify as biased information about your country – well, if the Romanian Ministry of Justice have it their way, you are as many times a criminal offender.

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<sup>16</sup> See "Freedom of association endangered?", *Early Warning Report* 7/2002, [www.sar.org.ro](http://www.sar.org.ro)

In all these cases the hardliners in government, Parliament or law and order agencies have simply seized the opportunity and reinstated measures in accordance to their old philosophy of social control. In other instances, such as combating tax fraud or classifying sensitive information, the original intention was probably understandable, but it was poorly transposed in law and hence abuses are not only possible, but quite probable<sup>17</sup>. In other words, policy priorities that are similar to those adopted in Western countries are likely to lead to very different effects in an environment of weak accountability and incomplete democratization. Romania's Western partners, primarily the EU and USA, must keep this in mind when they deal with their local counterparts.

Second, we have to pay more attention to the strengthening of those social actors who can act as counterweights and prevent state abuse. The public sector has to be made more transparent from within, in order to allow outside scrutiny, and proper horizontal accountability should be created. *Law and order (protecting private citizens from private wrongdoers) is not the only thing that matters – rule of law (protecting private citizens from the state, including law and order agencies) is also important.* Recently, APADOR-CH (a human rights association) has requested from the Office of General Prosecutor the number of authorizations of telephone surveillance issued in the last year and the number of cases brought to court based on such evidence. The Office refused, the association sued on FOIA and won in the first instance, but as the case moved forward after appeal, the Prosecutor made some public statements that can be interpreted as an attempt to intimidate judges who dare to rule against him. Such cases are likely to become more frequent in the new security-oriented environment, as we have seen last year when the prefect of Iași had to resign following suspicions that he knew about illegal telephone surveillance of conversations between local journalists and the EU ambassador. In other cases public officials took to harrasing journalists who insist on uncovering unpleasant stories, and judicial instruments proved to be very effective in this respect. Whether they are prosecutors, police officers, tax inspectors or intelligence agents, these overzealous individuals do a deservice to the government, and even the cabinet members have admitted this in some occasions. Most abuses are probably committed without central

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<sup>17</sup> In fact the laws are so sloppily written that many analysts believe this is done so on purpose, in order to give state agencies a free hand. For example, the proposed tax fraud law practically abolishes the privacy of personal bank transactions and creates an open list of agencies that can investigate such matters, under very weak or no court control.



coordination, in anticipation that this is what is expected from them. The government would be well-advised to distance themselves from such institutional *fedayeens*. Strong political signals that such behavior is unacceptable – such as punishing the most blatant abuses, and abandoning dangerous draft laws – would improve very much the image and credibility of the government.

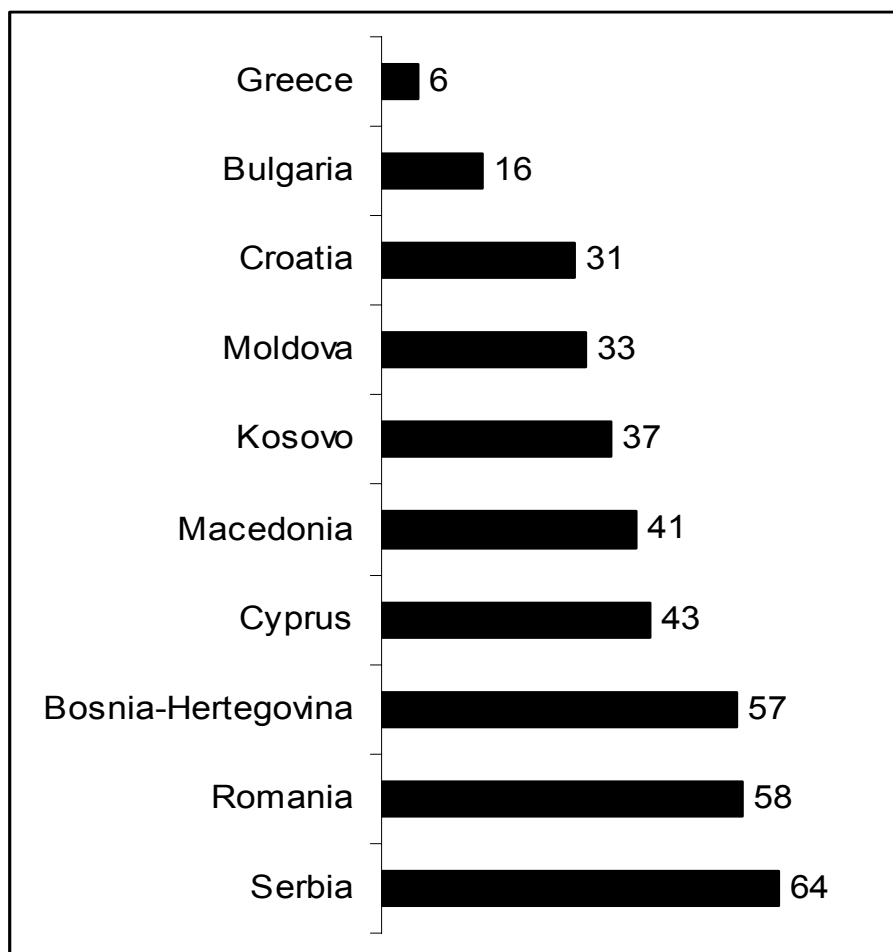
**Government  
should distance  
itself from the  
*fedayeens* who  
commit abuses in  
law and order  
institutions**

The role of the media, both written and electronic, is crucial for achieving the right balance between freedom and security in a society. It is the main vehicle for expressing alternative views, criticisms and discussing policies. In spite of frequent accusations of bias and control, the media looks pretty solid and independent in most of the Western countries – which cannot be said about their colleagues in Romania. In the last years we have seen a decline in its quality and independence, particularly as far as TV stations and local newspapers are concerned. The political and economic pressure on journalists and management has been tremendous, and the public watched with disappointment how quickly some of them fell into line. The remainder of this section explores the state of mass-media in Romania today; future issues of EWR will continue the Rule of Law warnings with subjects such as personal data and privacy protection, corruption and transparency&accountability (the last topic based mostly on our assessments of how FOIA and the Sunshine laws are implemented).

### **Regress concerning freedom of speech**

The annual report concerning freedom of speech elaborated by the Agency for Press Monitoring starts with the sharp assertion: "During the two years of the PSD ruling we can see a noticeable regress when it comes to freedom of speech." The Southeast European Media Organization (SEEMO) ranked Romania second in the region with regards to the number of cases of violation of press freedom. These cases included verbal threats and physical attacks; criminal or civil suits; conflicts with criminals, the military, police, secret services or governmental officials; problems with border authorities or with obtaining visas; disputes between media owners and editors and reporters and political pressures. In this ranking Romania is second after Serbia. Even countries like Bosnia, Macedonia and Moldova have had a smaller number of such incidents than Romania (see Fig.1).

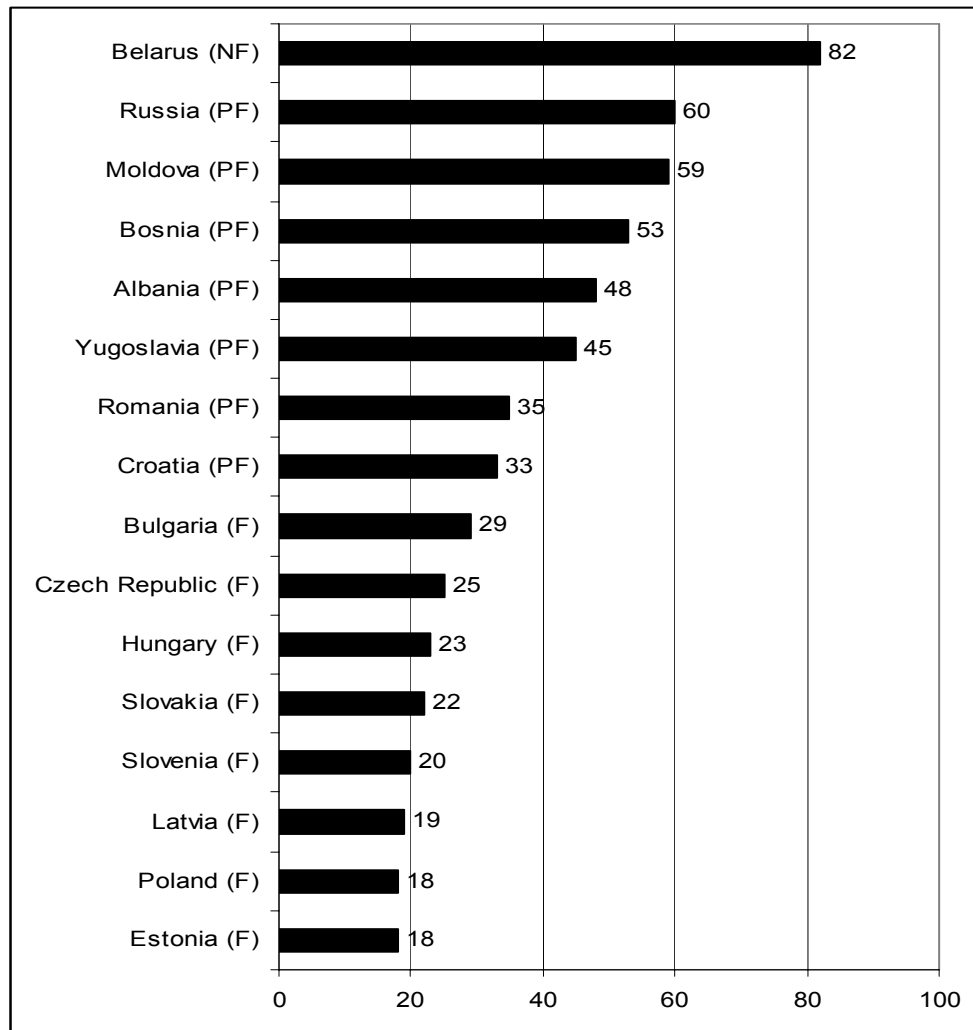
**Fig. 1. Number of press freedom violations (2002)**



Source: The Southeast European Media Organization (SEEMO)

Romania is the only candidate for the accession to the EU lying in the category of countries with partially free press in the Freedom House ranking (see Fig. 2). The current government has made significant economic progress, has maintained economic growth and has reduced inflation, however it failed at relaxing the legislation regarding freedom of speech and, in general, at indicators concerning democratic progress. *With regard to these indicators Romania ranks constantly among countries like Moldova, Yugoslavia, Macedonia, Bosnia.* Can a country that is invited to join NATO, and which is negotiating the accession to the EU, afford to be seen in such company?

**Fig. 2. Press freedom in former communist countries**



**Legend: F = Free Press; PF = Partly Free Press; Not Free Press = NF**

Rating: free press 0 – 30, partly free press 31 – 60, not free press 61 – 90.

Source: The annual survey of press freedom, Freedom House, 2002

### **A legislation surprisingly resilient**

Ever since 1997, Resolution 1123 of the European Council noted rather harshly that "certain provisions of the Penal Code now in force are unacceptable and seriously imperil the exercise of fundamental freedoms, especially Article 200 on homosexual acts and Articles 205, 206, 238 and 239 relating to insult and defamation, which interfere with the freedom of the press." Even though six years have passed since then, the Romanian

governments of various political orientations have not resolved this problem. Ironically, the issue of incrimination of homosexuality has been resolved, even though there has been strong opposition, including the one from the Romanian Orthodox Church, but the press problem has not been resolved, despite the fact that everyone is in principle in favor of freedom of speech.

In all these official or non-governmental rankings, Romania loses points because of the legislation restricting freedom of speech. Legislative provisions such as the article from the Penal Code punishing the spreading of false information that could harm Romanian interests seem to be anachronistic remains of the communist right that democratic governments did not want to give up out of a mental inertia which is hard to understand. And still the article mentioned above was used as a pretext in the case of Armageddon II, when a person was arrested and another one cross-examined for having posted on the Internet information accusing the head of the government of corruption. The way the authorities dealing with the investigation have acted, their servilism and the unjustified media fuss reminded Romanians of pretty recent times. And such legislative anachronisms can be activated anytime if political interests dictate it. The Office of General Prosecutor maintained that spreading that information has damaged the Romanian image abroad, which is quite a debatable assertion. *What's for sure is that the whole "Armageddon II" scandal has damaged the Romanian image abroad much more: it made it look like a country where a fundamental freedom can be arbitrarily violated, a country in which freedom is uncertain.* It's been a year since the event and the case mentioned above has not been definitively closed yet; the state attorneys and policemen who showed a political servilism and false zeal in doing their job we could hardly imagine after more than ten years since the 1989 moment have been punished just by changes in positions which seem more like promotions.

It is clear that legislation does not make Romania a secure country for journalists. In 2001 a delegation of the Romanian Parliament to the Council of Europe declared that insult and calumny are no longer incriminated by local legislation. However, APADOR-CH pointed out that it was simply a lie, thus putting the government in a delicate position. The disinclination of defamation, calumny and insult is a long complicated story with embarrassing moments and intentional delays from which one can only infer the lack of political will from the part of those in power. The government emitted in 2002 an emergency ordinance that solves the problem only partially: it annuls jail sentence for insult, diminishes the sentence for calumny but creates a new discrimination between dignitaries and simple citizens by adding

new penalties for offenses against the former. *Although the government had the chance to change something, it preferred to do nothing about the essence of the problem: jail sentence for journalists.* Moreover, when it came to be discussed in the Parliament, the members of the party in power joined the right extremists from the Romania Mare Party in order to make the sanctions in this ordinance even harsher. President Iliescu rejected this ordinance asking for the annulment of jail sentence for calumny.

The new project of the Penal Code that the government submitted for public debate at the beginning of 2003 does nothing but reiterates these mistakes. Jail sentence changes into the so-called fine-days, a legal artifice that changes jail into money. The amount of these fines is huge for journalists, as most of them earn less than the average wages on the economy (\$130), not to mention journalists from local publications. What is even more absurd is that these fines can be given even if the journalist proves not guilty or shows good faith, in case a person feels offended or defamed. This interpretation that the law allows is not just a theoretical possibility- there have already been cases in which the court acted on it. Moreover, the new Penal Code punishes country defamation, the spreading of any "biased" information and defines treason in a very ambiguous way. In short, in 2003 the government puts forward a penal code that is already dated and that does nothing but continues the legislation against freedom of speech. The last report of the Council of Europe (14 January 2003, Committee on Culture, Science and Education) made a note of these missed opportunities: *"While the trend to improving the situation can be welcomed; it is regrettable that the proposed reform falls short of Council of Europe standards. To follow them, it would be highly suitable that the Romanian Parliament remove altogether libel, insult and calumny from the Penal Code."*

The Armageddon case itself presented above can offer an answer to the question: why do the Romanian governments (current and previous ones) refuse to liberalize the legislation regarding freedom of speech? Why such stubbornness? Although the Romanian government usually proves to be very receptive to the messages of the European Commission, it ignored the recommendation in the last country review to give up restrictive legislation. Why so? Because the Romanian politicians want to possess an efficient instrument to intimidate the press- this is the only conclusion that the organizations for protecting journalists could come up with. On the other hand, the government put forward a Law on Classified Information under the pretext that it was a requirement for the accession to NATO. This law that was adopted by the Parliament in April 2002 was considered to be too restrictive by the civil society. The definition of classified

information is too vague and the list of those who can classify information is too long. Practically, any dignitary or government official can classify office information without any further checkings.

By means of the new Law on Broadcasting (504/2002) the National Council of Broadcasting- CAN – can lift the license of TV channels without any provisional sanctions. The CNA members are appointed by the Presidency and Parliament, therefore they can be influenced politically. There has already been a first controversial case in which CNA lifted the broadcasting license of a TV channel. OTV was a TV channel specialized in scandals, aired low quality programs, had no clear revenue sources, and did not follow any ethical standards with regard to journalism. In September 2002, the leader of the extremist Romania Mare Party, senator Corneliu Vadim Tudor, was invited in a live talk-show where he expressed racist opinions regarding the Romano and the Jewish and foul attacks against his political adversaries, including the government. CNA lifted the license of the channel on the basis of article 40 of the new law that bans all programs with a content urging to racial or ethnic hatred. Even though the decision seems correct and in accordance with the new law, the way it was implemented and communicated raised question marks. The Ministry of Communications ordered immediately that the cable firms interrupt the broadcasting of the channel and they complied with it. CNA did not communicate the decision immediately and motivated it only later, giving the impression of an impromptu act, especially since president Iliescu had previously asked for the checking of the channel. The public reaction was weak and most newspapers approved of the decision, as OTV had a terrible reputation among journalists. Anyway, the legal power of the CNA to rapidly lift a license as well as this unhappy case of shutting down a TV channel mean no progress, on the contrary.

As the table below shows (see Fig.3), Romania follows the general tendency of the other states in the region: restrictive regulations that the governments keep as spare measures for putting pressure on the press, promises of liberalizing the legislation made under Western pressure, only seldom put into practice, and a faulty mentality of politicians perceiving journalists as their potential enemies. However, Romania is a country that set up the year 2007 as target for its accession to the UE and cannot afford to be constantly compared with states that have just gotten out of war or are in severe social, political or ethnical crises. Unfortunately, the comparison is not only possible, but also relevant. For example, the comparative table shows Romania as being a country with the highest number of prosecutions in the region. This issue risks becoming even more pressing as *Article 19*, a large organization that deals with the protection of freedom of speech, carries on a campaign for including some very strict criteria of protecting freedom of speech for the accession to NATO and UE. If this idea materializes, Romania could find itself in serious trouble.

**Recommendations:**

- The punitive legislation in the domain of press has disastrous effects on the Romanian image worldwide. Since the current government is extremely sensitive to this aspect, it should eliminate completely the jail sentence for press offenses and the fines should be within reasonable limits and applicable only under very special circumstances.
- The new Penal Code that is still at the stage of public debate has to be updated and adapted to the modern principle according to which individual rights must be protected before vague and debatable collective entities. Freedom of speech is more precious than an illusory "national pride" that the initial project wants to protect by resorting to excessive means. The signal given out by the government is already extremely negative.
- The adoption of the Freedom of Information Act was a salutary step forward. The law positively discriminates the press in a special section but needs a better implementation policy. With few exceptions, the journalists have not realized the advantages they can enjoy by means of this law, therefore there is a need for special training courses. Editors and employers' press organizations should teach their employees to benefit from the new opportunities.
- Many of the trials in which journalists are convicted show that Romanian courts do not know about the decision of the European Court in Strasbourg, based on the European Convention on Human Rights. Having been signed by Romania ever since 1994, this became part of domestic right. Although there is a first case that was won in 1998, Dalban versus Romania, journalists keep being convicted on the basis of domestic laws that are clashing with the Convention. The Ministry of Justice should hold training courses for judges based on European judicial precedents in order to avoid the situation that happened before, when Romania had to pay damages.

Fig. 3. Comparative table for SEE, November 2002

	Transparent and fair allocation of licenses and frequencies	Editorial independence of public broadcaster	Independent regulatory body	Access to public information	Protection against undue defamation charges
<b>Albania</b>	Yes, although there have been some complaints on fairness of regulatory body.	Formally yes, there is a mixed body to oversee it. In practice however, PBS is seen by public as strongly influenced by the government.	Formally yes, but without real authority to address – for instance - the problems of piracy.	Yes, adopted in November 2000. Still very difficult to obtain information. Ministries bluntly refuse requested public information.	Defamation is in penal code, prison sentences possible, courts presume bad faith and fines/ damages are disproportionate .
<b>Bosnia – Herzegovina</b>	Yes. Clear criteria, fair and competitive procedure and possibility for appeal.	Formally yes, rules should safeguard independence but still to be proven in practice.	Yes, the Communication s Regulatory Agency (CRA) is an independent state body, financed from the license fees.	Yes, laws adopted but low level of public awareness and very limited implementation.	High Rep decriminalized defamation. New defamation law drafted by mixed group of international and local experts. Adopted by RS, but not Federation BiH.
<b>Bulgaria</b>	Lack of transparency and some shortcomings in the law lead to heavy criticism. Also lack of criteria and no action against pirate channels. Review underway.	Formally yes, but management and key editorial staff changes regularly.	Unstable. Members / rules change with each government.	Yes. Adopted in 2000. Getting information not easy, but courts obliged authorities to release info in several cases and public officials get training.	Defamation is in penal code (no imprisonment) and fines are high. However, positive modifications in 2000 and Supreme Court has ruled in favor of journalists.
<b>Croatia</b>	Formally yes, but complaints about criteria and slow/inefficient voting procedure.	Formally yes, but critics say influence of the authorities is tangible and PBS receives preferential treatment.	Yes.	No, although there are some provisions in general law. Authorities not responsive to such requests, though.	Defamation is out of penal code, but the damages under civil code are high and still arbitrary. Hundreds of civil cases pending due to slow



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					judiciary.
<b>FYR Macedonia</b>	No. Process is not transparent, does not appear fair, there is a lack of clear criteria and outcome seems politically motivated.	No. Appointment of key management is political, done by parliament and changes elections. MRTV is viewed as government mouthpiece. No real editorial independence.	No, the Broadcasting Council can only recommend and its independence is considered declarative at most by critics.	No. NGO's have started preliminary work on draft law has.	Defamation in penal code, but very few cases partly due to slow judiciary.
<b>Moldova</b>	Formally yes, the Audiovisual law has criteria on which the Council decides. However, many complaints about objectivity, fairness and transparency after licenses were granted.	No, governmental influence caused major crisis leading to recently adopted law on transformation of PBS. Experts are pessimistic about possible improvement, though.	Formally yes, but members of Broadcasting Coordination Council appear rather close to those that nominated them (parliament, president, government).	Yes. Law adopted in May 2000 but nothing is done to implement it. Ministries reluctant to provide information.	Defamation in penal code, but not used. Hundreds of civil cases though, as public officials are more protected and burden of proof lies with media.
<b>Montenegro</b>	No, the process is not transparent, and considered unfair due to lack of criteria and openness. New legislation should improve this, yet implementation is postponed.	No, the state broadcaster hasn't been transformed into genuine PBS and editorial policy is seen as heavily influenced by government and parliamentary majority.	No. New laws foresee the establishment of an independent body, but implementation is suspended until next year.	No. NGO's are working on draft law.	Defamation is in penal code, prison sentences possible though not applied, public officials are protected and fines are very high.
<b>Romania</b>	Yes, in theory, but many serious complaints about transparency	Editorial independence is formally guaranteed by law, but management	Yes.	Yes, adopted in 2001. No real implementation and public awareness, though.	Insult and libel in penal code, burden of proof with media, disproportionate fines, 400 cases

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	and fairness. Council does not publicly motivate decisions. Under new law (2002), two bodies oversee licensing/frequencies.	changes regularly; parliament can force new board if, as it did, rejects the annual report.			per year. Recently government initiated amendment to lower fines.
<b>Serbia</b>	No, a moratorium exists since the end of 2000. With the new broadcasting law adopted (June 2002), a regulatory body has to be formed, frequency plan made and subsequently new licenses / frequencies can be allocated.	Formally RTS is still state controlled, but political influence appears limited and transformation process towards public institution is ongoing.	To be formed by the end of October 2002, but so far nomination of members stalled in parliament. Statutes to be adopted.	No. A law is in preparation and should be submitted to the parliament.	Defamation is in penal code, journalists are regularly sued.

Source: Yasha Lange, *Media Task Force*, Stability Pact for SEE

### **A poor, hence vulnerable press**

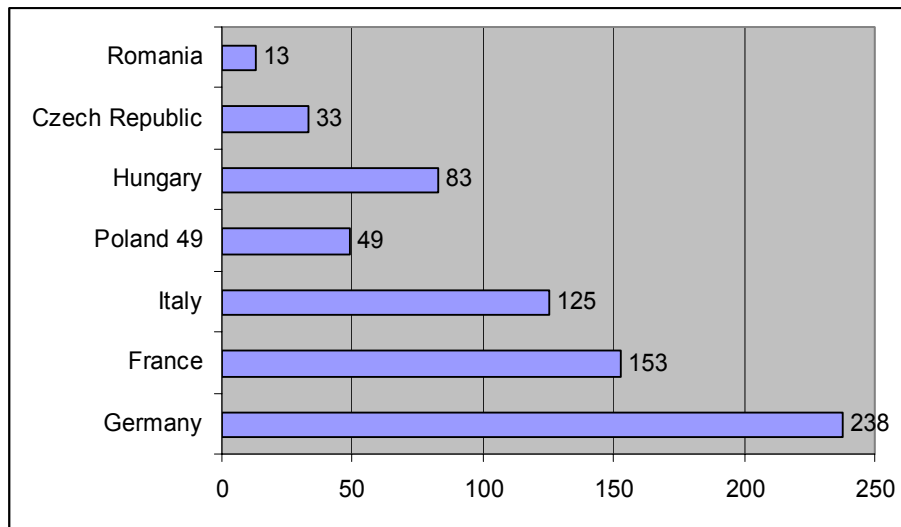
The media is not a very profitable business in Romania. The majority of press institutions are in a precarious economic situation. That is why the press is extremely vulnerable to economic pressures. These pressures manifest themselves both at the (1) journalist level; and (2) employer level.

#### *1. The journalist –when compromise becomes desirable*

The average salary in Romania is the lowest among the countries that are candidates for the accession to the UE, and the average salary of journalists is lower than national average. Cases in which journalists receive "a second salary" from some political parties or institutions have become more frequent especially over the last years. These cases are known among the press people, but neither other journalists, nor professional organizations are outraged by this situation. There exist hilarious cases, such as the one in Timișoara, where five journalists became also employees of

the County Council. At a focus-group meeting organized by the Center for Independent Journalism (CIJ), a journalist said: "The worst thing is that such practices start to be considered as being normal, even desirable." CIJ estimates there are about 14.000 journalists in Romania, even though official statistics show a maximum of 8.000. The difference between the figures comes from the practice of replacing permanent labor contracts with the so-called collaboration contracts, a form of employment that does not protect the employee from the abuses of the employers. There are many professional organizations, but very few of these are really active and give any assistance to journalists. The largest organization, the Romanian Press Club (RPC) is a strange hybrid in which both media employers and employees are represented. RPC is efficient when negotiating advantages for the media industry with the government, but it cannot provide simple journalists with an efficient protection particularly because of its structure.

**Fig. 4. Advertising costs (Euro per capita - 2001)**



Source: ARBOmedia

## 2. When only money talks

A lot of newspapers, although not very efficient, are owned by thriving business people only with the intention to follow a different type of interests. In general, the ownership in media is rather obscure and the press is used as an instrument to accomplish other goals of the group that controls it (pressure on private partners, rent-seeking, etc). Very few publications were taken over by foreign media trusts (*Evenimentul Zilei*, *Libertatea*),

as these also have the greatest number of readers. The tragic demise of the manager of the most influential daily paper (*Adevărul*) raised a lot of questions about the way he had taken over the majority of shares just a few months before his death. There are persistent speculations about some politicians that could be behind these shares. In very many editing offices there are taboo topics that journalists respect. These topics regard financial interests of the owners as well as political interests that could prove "helpful". It is pretty difficult to develop autonomous press businesses, since the press market is extremely limited and already overcrowded.

Not even foreign ownership can be a guarantee of editorial independence. Recently the whole news team of Europa FM – one of the most popular FM radio stations across the country, especially in large cities – has resigned blaming pressures to suppress unpleasant news and ban certain political commentators. The owner of Europa FM is the French industrial group Lagardere, which is believed to have plans to expand its operations in Romania. Apparently, losing audience better for business than news that may annoy authorities.

Advertising doesn't manage to provide half of the publications' revenues, which have to rely on sales, and this is what renders them rather unstable from the economic point of view. Although the market is pretty small, some players find ways to cheat. Another scandal in 2002 centered around the way in which some newspapers tried to get advertising from large companies by threatening with the launching of some negative media campaigns. The weekly *Academia Cațavencu* accused *Ziua* for having used this method. The same *Ziua* benefited in a strange way from massive advertising appearances from the part of some state companies, all of them being subordinated to the Ministry of Transports (National Railroad Company, Roads Administration, International Otopeni Administration, Constanța Harbor Administration). However, the market has had a tendency of self-regulating after the coming out of the National Study of Audience, that allows the buyers of advertising space to be guided by the number of readers. This way, the hierarchy of the revenues from advertising changed considerably between 2000 and 2002, and newspapers with a lot of readers, such as *Libertatea* and *Evenimentul Zilei*, benefited from this profesionalization.

TV channels don't seem to be doing better. As a result of developing a professional system of ratings, the method of allocating advertising space (pay per audience index) changed too. This change was detrimental to TV channels, which overevaluated their prices for advertising. These prices decreased

dramatically from \$2-3000 per minute to a few hundreds. Thus, TV channels had to increase the number of advertising spots by approximately 30% from 2000 until 2002 (Alfacont data). These circumstances made TV channels even more vulnerable to political pressures. The obscure relationships between TV channels' employers and the government raised a lot of suspicions. The political vulnerability increased from the moment the management of audio-visual press groups gave in to the temptation of fast gains and started to delay the payment of taxes and social contributions related to salaries, this way accumulating arrears over time that are difficult to pay at present.

**Fig. 5. Number of advertising spots in main TV channels (thousands)**

	<b>Pro-TV</b>	<b>Antena 1</b>	<b>Prima-TV</b>
2000	65	70	60
2001	80	69	68
2002 (just first 9 months)	93	90	93

Source: Alfacont

SWEET COVERAGE FOR DEBT BLINDNESS<sup>18</sup>

Media Pro International, which owns the broadcasting license for the largest private channel in the country, Pro TV, has accumulated debts to the state budget of nearly 1.4 trillion lei [\$40 million], as sources from the Ministry of Finance indicate. In October 2001, Gheorghe Oana, secretary of state in the Ministry of Finance, publicly acknowledged that Pro TV's owner had debts to the state, but wouldn't specify the amount. The disclosure prompted the American Securities and Exchange Commission (SEC) to open an investigation into the debts of Media Pro International, where U.S. billionaire Ronald Lauder's Central European Media Enterprises (CME) holds a 66 percent stake. A source close to the company's management says that Media Pro International struck a deal with Nastase's ruling PSD – an exchange of positive coverage for winking at the channel's debts. Partly owned by SBS Broadcasting, TV Prima is in a similar situation. At the beginning of 2000, Amerom SRL, the owner of TV Prima's broadcasting license, had debts of \$29.7 million to the Banking Claims Resolution Agency (AVAB). In the first quarter of that year the channel posted revenues of only \$704,000, and spent nearly \$2 million. SBS announced that it would freeze its investments into the channel in the next three years. Moreover, the company has sold 53.5 percent of its shares in the channel to an undisclosed company owned by TV Prima's head, Cristian Burci. Trying to save Burci – widely held to be a political ally of the PSD – the government pumped some \$5.9 million from public coffers into the pockets of TV Prima's boss to keep the channel afloat. The shady deal was leaked out in April 2002 when the opposition Democratic Party presented documents to the parliament proving that companies owned by the Ministry of Transportation transferred cash to Global Media, where Burci holds a majority stake. Reports on the TV Prima saga have progressively disappeared from the press. The second largest TV channel, Antena 1, has always been known as the mouthpiece of the former communists, dressed in social democratic garb after the 1989 revolution. "Nastase's spokesperson calls the news editors and tells them what piece of news about government must be broadcast and when," a source from Antena 1's editorial staff says. Dan Voiculescu, head of Antena 1's owner (the Grivco Group) is also president of the Romanian Humanist Party (PUR), a member of the ruling coalition. The Romanian public television, TVR, which gathers a 13% audience on its first channel, Romania 1, has always been highly politicized. The parliament appoints its council. Initially, there were high hopes for the parliament-controlled National Audiovisual Council, which was tasked with charting freedom of expression. But so far, as media observers point out, the council has miserably failed in objectively assessing the pressures exerted on TV channels.

"Transition online  
June 2002"

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<sup>18</sup> Source: *Transitions Online*, June 2002

### **Local press – an easy prey**

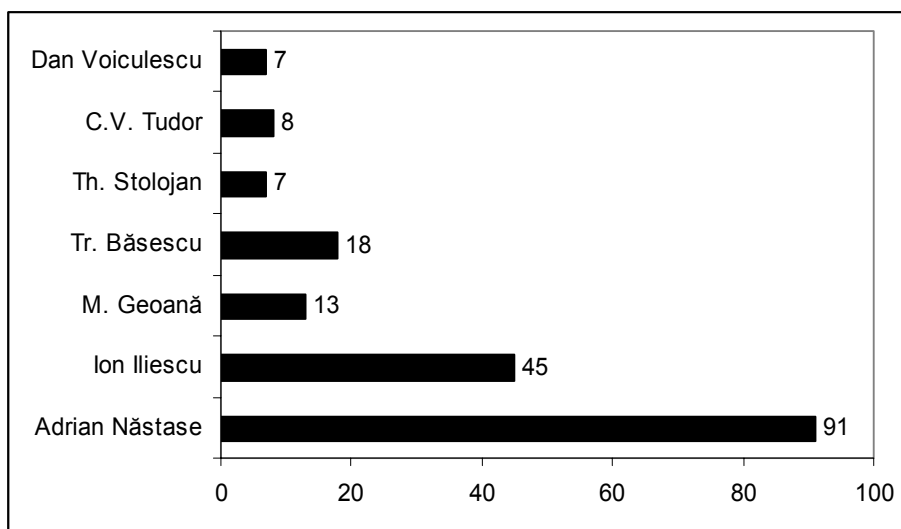
Local papers altogether have more readers than central ones. At the same time, the market is very fragmented, the number of potential readers is smaller, therefore the local press is a more tempting and easier prey to political circles. After the PDSR (current PSD) won the elections in 2000, a real campaign was launched by means of which business people close to the party bought local papers. The best example is the case of *Monitorul* network, which used to manage publications in the most important cities in the country. The *Capital* magazine did a survey and came to the conclusion that, after a series of financial transactions, many of the publications from this network were taken over by business people that were open supporters of the PSD (Piatra Neamț, Brăila, Roman, București). According to the same source, in each district there are publications that are close to the ruling party, quasi-official papers, and in places where this is lacking there are pressures for buying key publications.

In some cases, journalists from the former *Monitorul* network laid the foundation of some independent newspapers starting from scratch. When the editors of the former *Monitorul de Vrancea* (Vrancea is a district in Moldova) founded *Ziarul de Vrancea* local authorities started a campaign to intimidate them that included everything from persistent audits and controls from the part of firemen to the hiring of some bullies that hunted down paper sellers. Although there was a court order in favor of the editorial staff, the authorities closed down all the stands the paper was using (the distribution network RODIPET, a state property, refused to distribute it). They also banned the access of accredited journalists representing public institutions, this way violating the Freedom Access of Information Act. Several local institutions sued the paper, generating a total of 135 trials for which damages worth 400.000 Euro are claimed. The central leadership of the party did not make any efforts to stop this campaign led by the local leader of the PSD, Marian Opreșan, although not long ago the PSD elaborated some well-meaning guidelines to regulate the relationships with the press. Vrancea is not the only district with problems. On the contrary, in many districts there appeared the so called "local barons", who are local leaders of the PSD, are holding all the administrative levers in the districts and react violently, verbally and even physically, against the few critical opinions.

### Fewer voices

The report of the World Association of Newspapers from November 2002 notes the fact that in Poland, Moldova, Yugoslavia, Macedonia and Romania there are "tendencies toward stronger state control". Romanian analysts agree that the media presence of the ruling party is abnormally frequent. Prime minister Năstase is undoubtedly the star of the news journals, as many evenings he appears even in 4-5 pieces of news.

**Fig. 6. Political leaders on main five TV channels (main news journals)**



Source: Media Monitoring Agency – Academia Cațavencu, for 26.09.2002 – 9.10.2002 period.

The disproportion between the power and the opposition is overwhelming. Moreover, as the Media Monitoring Agency shows, TV news journals have become less conflictory and focus more often on news in brief. TV news journals in Romania have become some sort of review of rapes, crimes and traffic accidents. Although editors think they can keep their ratings high this way, news journals are less watched, losing almost 20% of the audience they had in 2000. Therefore the main reason for this situation is not the audience, as they always claim- studies show that the potential gains generated by insisting on "petty" scandals are actually limited- but their attempt to avoid politically sensitive topics, plus the lack of professionalism from the part of media people and the slightly higher costs of some news and quality analysis programs.

One of the members of the National Audiovisual Council (appointed by the ex- president Emil Constantinescu) used the



French model to propose that the institution should force TV channels to allocate 30% of their news time for representing the opposition. Although this proposal was made in good faith, it was considered an unacceptable arbitrary intervention from the part of the state, and the very fact that such an idea was put forward reflects the seriousness of the situation. The proposal became a simple recommendation, without imposing anything on TV channels and nothing changed.

The situation of TV news journals is not an exception. Public debate in Romania has to suffer because of the clear domination of the PSD. The fact that the mayor of Bucharest, Traian Băsescu, came into conflict with the PSD administration has made him a favorite target of TV programs that either attack him on different topics or broadcast in excess the attacks from the part of his adversaries. Public television and radio have become servile even by Romanian standards, which accept by "tradition" a certain tendency of the public press to serve the power. The parliament changed the Council of Administration of the Public Radio abusively in 2002, abolishing the idea of a system of check and balances that would have ensured a certain independence towards the newly-established power. There have also been a lot of pressures to change the Council of Administration of the Public Television, but this action was eventually hindered. The official press agency, Rompres, was placed at the orders of the Ministry of Public Information in 2001, and journalists became public employees. At the initiative of the National Liberal Party, Rompres was allowed to become an autonomous institution controlled by the Parliament.

#### **Recommendations:**

- The leaders of the PSD should use all their political influence to prevent the recalcitrant local leaders from committing primitive abuses against the press. As the current power is pro-West, these attacks against freedom of speech become attacks against the image of Romania, which risks compromising its efforts of getting out of the gray zone of democracy.
- The government expressed its intention to adopt an emergency ordinance on access to information regarding the debts owed to the state budget. Implementing this act with regard to press trusts, establishing clear and transparent terms for debt redemption, which would exclude hidden

"arrangements", would dispel the doubts about the blackmailing of debtors.

- The overwhelming presence of the ruling party on TV channels risks being disadvantageous to it in the long run. The public is used to hearing the opinions of the prime minister on almost any topic and thus it will direct its dissatisfaction exclusively towards him. This is a risky bet<sup>19</sup>.
- Because of the abusive replacements and transparent pressures, the credibility of the public television and radio has received severe blows. Being recognized as quasi-official sources, they are no longer efficient with regard to what their major objective should be: informing citizens on matters of public interest.

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<sup>19</sup> As shown by the recent example of the government involvement in the matter of regrowing the turf on the national stadium for the important soccer game with Denmark. This investment proved to be a total failure and the government and the prime minister are paying now in political capital for the gratuitous involvement in a trivial matter they shouldn't have had anything to do with.

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